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COMMISSIONERS

TITLES 7-13

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013

TITLE 7

SPECIAL PROCEEDINGS

CHAPTER.

6. CONTEMPTS, §§ 7-602, 7-610.

11. PROCEEDINGS TO ESTABLISH PATERNITY, §§ 7-1107, 7-1126.

CHAPTER 3

WRITS OF MANDATE

7-302. When and by what courts issued.

JUDICIAL DECISIONS

Cited in: Leavitt v. Craven, — Idaho —, — P.3d —, 2012 Ida. LEXIS 141 (June 8, 2012).

CHAPTER 4

WRITS OF PROHIBITION

7-402. When and how issued.

JUDICIAL DECISIONS

Adequacy of Other Remedy.

Idaho department of land's motion to dismiss the attorney general's writ of prohibition was granted, as there was a plain, speedy, and adequate remedy in the ordinary course of law, such that an extraordinary writ of prohi-

bition would be improper. Injunctive relief would be at least as effective as issuance of the writ, if not more so. State v. Idaho State Bd. of Land Comm'rs (In re Verified Petition), 150 Idaho 547, 249 P.3d 346 (2010).

CHAPTER 6

CONTEMPTS

SECTION.

7-602. Reentry of dispossessed person on real property — Procedure upon conviction.

SECTION.

7-610. Judgment — Penalty.

7-602. Reentry of dispossessed person on real property — Procedure upon conviction. — Every person dispossessed or ejected from or out of any real property by the judgment or process of any court of competent jurisdiction, and who, not having right so to do, reenters into or upon, or takes possession of, any such real property, or induces or procures any person not having right so to do, or aids or abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued. Upon a conviction for such contempt the court shall

immediately issue an alias process directed to the proper officer, and requiring him to restore the party entitled to the possession of such property under the original judgment or process, to such possession.

History.

C.C.P. 1881, § 831; R.S., R.C., & C.L., § 5156; C.S., § 7384; I.C.A., § 13-602; am. 2012, ch. 20, § 2, p. 66.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 20, substituted “the court shall immediately” for “or

justice of the peace must immediately” near the beginning of the last sentence.

7-610. Judgment — Penalty. — Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five thousand dollars (\$5,000), or he may be imprisoned not exceeding five (5) days, or both; provided that a person who is guilty of contempt for neglecting to attend or serve as a juror when summoned to do so, or for failing to appear as a prospective juror when summoned by the jury commission under section 2-208(4), Idaho Code, shall be fined in an amount not exceeding five hundred dollars (\$500), or may be imprisoned not exceeding five (5) days, or both; and except that if the contempt of which the defendant be adjudged guilty be a disobedience of a judgment or order for the support of minor children, he may be imprisoned not exceeding thirty (30) days in addition to such fine, under this section, as the court may impose. Additionally, the court in its discretion, may award attorney’s fees and costs to the prevailing party.

History.

C.C.P. 1881, § 839; R.S., R.C., & C.L., § 5164; C.S., § 7392; I.C.A., § 13-610; am. 1967, ch. 132, § 2, p. 302; am. 1997, ch. 200, § 1, p. 575; am. 2013, ch. 207, § 2, p. 494.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 207, inserted “provided that a person who is guilty of contempt for neglecting to attend or serve as a juror when summoned to do so, or for failing to appear as a prospective juror when sum-

moned by the jury commission under section 2-208(4), Idaho Code, shall be fined in an amount not exceeding five hundred dollars (\$500), or may be imprisoned not exceeding five (5) days, or both; and” in the first sentence.

JUDICIAL DECISIONS**Inherent Power of Court.**

When appellants’ minor daughter was placed on probation for petit theft, the magistrate court violated appellants’ Fourth Amendment rights by requiring appellants to submit to random urine testing for drugs. While the magistrate had the authority to impose a probation condition under subsec-

tion (1)(j) of § 20-520, a violation of the probation was punishable by criminal contempt under § 7-601 and the exclusionary rule applied. Requiring appellants to undergo urinalysis testing constituted a search that was presumptively invalid without a warrant. *State v. Doe*, 149 Idaho 353, 233 P.3d 1275 (2010).

CHAPTER 7
EMINENT DOMAIN

7-701. Uses for which authorized.

RESEARCH REFERENCES

A.L.R. — Validity of extraterritorial condemnation by municipality. 44 A.L.R.6th 259. Zoning scheme, plan, or ordinance as temporary taking. 55 A.L.R.6th 635.

7-702. Estates subject to taking.

RESEARCH REFERENCES

A.L.R. — Validity of extraterritorial condemnation by municipality. 44 A.L.R.6th 259.

7-707. Complaint.

JUDICIAL DECISIONS

Sufficiency in General.

The director of the Idaho transportation board has the power to sign an order of condemnation on behalf of the board. Such an

order is deemed “entered” under this section. State DOT v. HJ Grathol, — Idaho —, 278 P.3d 957 (2012).

7-711. Assessment of damages.

JUDICIAL DECISIONS

ANALYSIS

Burden of proof.
Business damages.
Loss of visibility.

Burden of Proof.

The burden of proving just compensation is borne by the landowner. Conclusory assertions and denials of a utility’s pleadings on the value of the property are not sufficient. Rocky Mt. Power v. Jensen, — Idaho —, — P.3d —, 2012 Ida. LEXIS 34 (Jan. 26, 2012).

Business Damages.

In an inverse condemnation action based on the state’s decision to acquire a portion of defendant’s property for a highway improvement project, the district court correctly dismissed defendant’s inverse condemnation claim and request for business damages. Defendant’s claims based on restricted traffic

flow and the reduced visibility of its hotel were not compensable takings under Idaho law, as it was undisputed that motorists still had free access to and from defendant’s property. State v. HI Boise, LLC, — Idaho —, 282 P.3d 595 (2012).

Loss of Visibility.

Loss of visibility is not a compensable property right for a business in and of itself, unless some of the improvements alleged to obstruct visibility are located on land taken from the business through condemnation. State v. HI Boise, LLC, — Idaho —, 282 P.3d 595 (2012).

RESEARCH REFERENCES

A.L.R. — Elements and measure of compensation in eminent domain proceeding for temporary taking of property. 49 A.L.R.6th 205.

Zoning scheme, plan, or ordinance as temporary taking. 55 A.L.R.6th 635.

7-717. Possession by plaintiff — Payment of damages — Appointment of commissioners.

JUDICIAL DECISIONS

Appeals.

Appellate court denied condemnee's motion to dismiss the state's appeal because the appeal was not moot even though the state tendered a check to the condemnee in satisfaction of the judgment before filing its appeal. If the appellate court determined that the jury rendered a verdict in excess of just

compensation and ordered the condemnee to refund to the state funds in excess of that amount, the appeal would not be moot because the judicial determination would have a practical effect on the outcome, in that the state would recover some of its money. State Ex Rel. Winder v. Canyon Vista Family Ltd. P'ship, 148 Idaho 718, 228 P.3d 985 (2010).

7-718. Costs.

JUDICIAL DECISIONS

Attorney's Fees.

Award of attorney fees to a condemnee on appeal from a judgment of condemnation was proper because a number of issues raised by the state were not preserved for review, the only arguments properly raised on appeal related to whether the district court erred in

admitting the order of condemnation and whether the district court erred in an award of attorney fees to the condemnee, and neither argument had merit. State Ex Rel. Winder v. Canyon Vista Family Ltd. P'ship, 148 Idaho 718, 228 P.3d 985 (2010).

7-721. Possession by plaintiff pending trial.

JUDICIAL DECISIONS

Valuation in accelerated condemnation proceedings.

The Idaho transportation board negotiated in good faith for property condemned to facilitate the widening of a highway and the creation of an interchange. The valuation by the board was fair and did not have to take

into account a possible increase in value due to a proposed extension of an unrelated road. Neither the order of condemnation nor the complaint proposed condemnation of any portion of the property at issue for the purpose of the extension. State DOT v. HJ Grathol, — Idaho —, 278 P.3d 957 (2012).

CHAPTER 9

UNIFORM ARBITRATION ACT

7-902. Proceedings to compel or stay arbitration.

RESEARCH REFERENCES

A.L.R. — Application of equitable estoppel by nonsignatory to compel arbitration — Federal cases. 39 A.L.R. Fed. 2d 17.

Application of equitable estoppel against nonsignatory to compel arbitration under federal law. 43 A.L.R. Fed. 2d 275.

7-905. Hearing.

RESEARCH REFERENCES

A.L.R. — Consolidation by state court of arbitration proceedings brought under state law. 31 A.L.R.6th 433.

7-907. Witnesses — Subpoenas — Depositions.

RESEARCH REFERENCES

A.L.R. — Discovery in federal arbitration proceedings under discovery provision of Federal Arbitration Act (FAA), 9 USCS § 7, and Federal Rules of Civil Procedure, as permitted by Fed. R. Civ. P. 81(a)(6)(B). 45 A.L.R. Fed. 2d 51.

7-911. Confirmation of an award.

JUDICIAL DECISIONS

Appeal.
Because motion to confirm an arbitrator's award was filed, and granted, under this section, it was appealable as a matter of right under Idaho App. R. 11(a)(8) and subsection (a)(3) of § 7-919. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

7-914. Judgment or decrees of award.

JUDICIAL DECISIONS

Attorney Fees.
Insurers could recover a discretionary award of attorney fees incurred responding to an untimely appeal. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

7-919. Appeals.

JUDICIAL DECISIONS

Applicability.
Because motion to confirm an arbitrator's award was filed, and granted, under § 7-911, it was appealable as a matter of right under Idaho App. R. 11(a)(8) and subsection (a)(3) of this section. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

RESEARCH REFERENCES

A.L.R. — Adoption of manifest disregard of law standard as nonstatutory ground to review arbitration awards governed by Uniform Arbitration Act (UAA). 14 A.L.R.6th 491.

CHAPTER 10

UNIFORM INTERSTATE FAMILY SUPPORT ACT

7-1015. Continuing, exclusive jurisdiction to modify spousal support order.

JUDICIAL DECISIONS

Applicability.

Spousal support obligation arose from a contract between the parties, and the provision was not incorporated into the divorce

decree. This section was not applicable. *Davidson v. Soelberg*, — Idaho —, 296 P.3d 433 (Ct. App. 2013).

CHAPTER 11

PROCEEDINGS TO ESTABLISH PATERNITY

SECTION.

7-1107. Limitation of action.

SECTION.

7-1126. Custody of children — Best interest.

7-1107. Limitation of action. — (1) Except as provided in section 16-1504(9), Idaho Code, a proceeding to establish paternity of the child under the provisions of this chapter may be instituted either before or after the birth of the child but must be instituted before the child reaches the age of majority as defined in section 32-101, Idaho Code.

(2) This section shall apply retroactively, and is for the benefit of any dependent child, whether born before or after the effective date of this act, and regardless of the past or current marital status of the parents.

History.

I.C., § 7-1107, as added by 1985, ch. 159,

§ 4, p. 417; am. 1986, ch. 221, § 1, p. 584; am. 2013, ch. 138, § 1, p. 323.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 138, added the subsection designations; and rewrote subsection (1), which formerly read: "Proceedings to establish paternity of the child may be insti-

tuted only after the birth of the child and must be instituted before the child reaches the age of majority as defined in section 32-101, Idaho Code."

7-1126. Custody of children — Best interest. — In any proceeding to determine custody under the provisions of this chapter, the court shall apply sections 32-717 through 32-717E, Idaho Code. However, the court shall not consider whether or not the mother or father did or did not voluntarily consent to the adoption of the child or to the relinquishment of parental rights in determining best interest of the child.

History.

I.C., § 7-1126, as added by 2013, ch. 138, § 2, p. 323.

TITLE 8

PROVISIONAL REMEDIES IN CIVIL ACTIONS

CHAPTER.

5. ATTACHMENTS AND GARNISHMENTS, § 8-507C.

CHAPTER.

7. DEPOSIT IN COURT, § 8-705.

CHAPTER 1

ARREST AND BAIL

8-106. Time of making and contents of order.

JUDICIAL DECISIONS

Authority of Sheriff.

County commissioners' supervisory authority to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners' statutory duties under §§ 20-622 and 31-1503 do not encompass con-

trol of bail, which is a matter within the sheriff's authority under this section and §§ 19-817 and 31-2202(6). *Allied Bail Bonds, Inc. v. County of Kootenai*, 151 Idaho 405, 258 P.3d 340 (2011).

CHAPTER 5

ATTACHMENTS AND GARNISHMENTS

SECTION.

8-507C. Forms.

8-507C. Forms. — The notice of exemptions, instructions to debtors and third parties, and the claim of exemption shall be in a form substantially similar to the form hereinafter provided. The forms shall be made available in English and Spanish language translations in the offices of each county sheriff. Notice, written in Spanish, of the availability of these documents in Spanish translation shall be set forth on the notice of exemptions.

IMPORTANT LEGAL NOTICE/NOTICIA LEGAL IMPORTANTE

MONEY/PERSONAL PROPERTY BELONGING TO YOU MAY HAVE BEEN TAKEN OR HELD IN ORDER TO SATISFY A COURT JUDGMENT. YOU MAY BE ABLE TO GET YOUR MONEY/PROPERTY BACK SO READ THIS NOTICE CAREFULLY.

SI SOLAMENTE HABLA ESPANOL PUEDE OBTENER UNA FORMA EN ESPANOL EN EL DEPARTAMENTO DEL SHERIFE.

The enclosed writ of execution and/or notice of garnishment has directed the sheriff to take custody by levying on your money and/or personal property in order to satisfy a court judgment.

The sheriff has levied on your money and/or personal property. You have

FOURTEEN (14) DAYS after the date of mailing or personal service of these documents to file a claim of exemption with the sheriff. An exemption from levy entitles you to obtain the release of your money and personal property.

The following is a partial list of money and personal property that may be exempt from levy. EXEMPTIONS ARE PROVIDED BY IDAHO AND FEDERAL LAW AND CAN BE FOUND IN THE IDAHO CODE AND IN THE UNITED STATES CODE. MOST OF THE EXEMPTIONS PROVIDED BY THE STATE ARE CONTAINED IN CHAPTER 6, TITLE 11, IDAHO CODE. GOVERNMENTAL BENEFITS SUCH AS SOCIAL SECURITY, SSI, VETERANS, RAILROAD RETIREMENT, MILITARY, AND WELFARE ARE EXEMPT FROM LEVY IN MOST CASES UNDER FEDERAL LAW.

This list may not be complete and may not include all exemptions that apply in your case because of periodic changes in the law. Additionally, some of the exemptions may not apply in full or under all circumstances. There may be special requirements for child support. You or your attorney should read the exemption statutes which apply to you.

If you believe the money or personal property that is being levied upon is exempt, you should immediately file a claim of exemption. If you fail to make a timely claim of exemption, the sheriff will release money to the plaintiff, or the property may be sold at an execution sale, perhaps at a price substantially below its value, and you may have to bring further court action to recover the money and property.

The sheriff cannot give you legal advice. Therefore, if you have any questions concerning your rights in this action, you should consult an attorney as soon as possible. You may contact the nearest office of Idaho legal aid services, inc. to inquire if you are eligible for their assistance.

SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED

Type of Money and Property

1. Alimony, support, maintenance (money or property)
2. Appliances (household) (\$750 per item, up to \$7,500 gross)
3. Annuity contract payments
4. Bodily injury and wrongful death awards*
5. Books (professional) up to \$2,500
6. Burial plots
7. Child support payments*
8. Disability or illness benefits*
9. Furnishings (household) (\$750 per item, up to \$7,500 gross)
10. Health aids
11. Homestead, house, mobile home, and related structures
12. Jewelry (up to \$1,000)
13. Life insurance benefits payable to spouse or dependent*
14. Medical and/or hospital benefits
15. Military retirement and survivor's benefits
16. Motor vehicle: car, truck, motorcycle with a value of up to \$7,000 per person

17. Pension: stock bonus, profit sharing annuity, or similar plans
18. Personal property: (\$750 per item, up to \$7,500 gross) (furnishings, appliances, one firearm, animals, musical instruments, books, clothes, family portraits and heirlooms)
19. Public assistance: federal, state, or local including: Aid to Aged, Blind and Disabled (AABD); Aid to Dependent Children (AFDC); Aid to Permanently and Totally Disabled (APTD)
20. Public Employee's Benefits including Federal Civil Service Retirement, Idaho Retirement and Disability
21. Railroad Retirement Benefits
22. Retirement, pension or profit sharing plan qualified by IRS
23. Social Security Disability and Retirement Benefits
24. SSI (Supplemental Security Insurance Benefits)
25. Tools of trade and implements up to \$2,500
26. Unemployment benefits
27. Veterans benefits and insurance
28. Wages or salary:
Consumer debts primarily for personal or household purposes: exemption is 30 times the federal minimum wage or 25% of disposable income, whichever is greater
Nonconsumer debts: exemption is 30 times the federal minimum wage or 25% of disposable income, whichever is greater
29. Worker's compensation
30. An unmatured life insurance contract other than a credit life insurance contract
31. An aggregate interest, not to exceed \$5,000, in any accrued dividend or interest under, or loan value of, an unmatured life insurance contract under which the insured is the individual or a person of whom the individual is a dependent
32. An aggregate interest in any tangible personal property, not to exceed the value of \$800

*To the extent reasonably necessary for support of family and if not commingled with other funds.

INSTRUCTIONS TO DEFENDANTS AND THIRD PARTIES

In order to claim an exemption from execution and garnishment under Idaho and federal law, you, the defendant, judgment debtor, or a third party, holding or known to have an interest in the money and/or personal property, must:

1. DELIVER OR MAIL A CLAIM OF EXEMPTION TO THE SHERIFF WHO LEVIED UPON YOUR MONEY AND/OR PERSONAL PROPERTY AT (SHERIFF'S STREET ADDRESS) ,
WITHIN FOURTEEN (14) DAYS AFTER MAILING OR PERSONAL SERVICE OF THESE INSTRUCTIONS, NOTICE OF EXEMPTIONS AND FORM FOR FILING A CLAIM OF EXEMPTION. IF YOU MAIL A CLAIM OF EXEMPTION, IT MUST BE RECEIVED BY THE SHERIFF WITHIN THE FOURTEEN (14) DAY PERIOD.

2. The sheriff has to notify the plaintiff or judgment creditor within one (1) business day, excluding weekends and holidays, that you filed a claim of exemption. The judgment creditor has five (5) business days, excluding weekends and holidays, after the date notice was provided that a claim of exemption was filed with the sheriff, to file a motion with the court contesting the claim of exemption.
3. If the judgment creditor notifies the sheriff that he will not object to the claim of exemption or does not file a motion with the court contesting the claim of exemption, the sheriff will immediately return the money and/or personal property or notify the bank or depository institution to release the money and/or personal property which has been levied upon.
4. IF THE JUDGMENT CREDITOR DOES FILE A MOTION WITH THE COURT CONTESTING THE CLAIM OF EXEMPTION, YOU, THE JUDGMENT DEBTOR OR ANY INTERESTED THIRD PARTY, WILL RECEIVE A COPY OF THE MOTION AND NOTICE OF HEARING. A HEARING WILL BE HELD WITHIN NOT LESS THAN FIVE (5) NOR MORE THAN TWELVE (12) DAYS AFTER THE FILING DATE OF THE MOTION. YOU SHOULD BE PREPARED TO EXPLAIN THE GROUNDS FOR CLAIMING THE EXEMPTION IN COURT ON THE DATE AND TIME SET FOR THE HEARING. YOU SHOULD BRING WHATEVER DOCUMENTS YOU HAVE TO SUPPORT YOUR CLAIM.
5. This is a notice, not legal advice. If you have any questions concerning your rights in this action, you should contact an attorney as soon as possible. If you are low income and cannot afford an attorney you may contact the nearest office of Idaho Legal Aid Services, Inc. to inquire if they can assist you.

IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

.....,)
Plaintiff(s),)
vs.)
.....,)
Defendant(s).)
.....)

CASE NO.
CLAIM OF EXEMPTION

I claim an exemption from levy for the following described money and/or property:

- a. Money, including money in a bank account, which was paid to me or my family as:
- Public assistance of any kind
- Social security or SSI
- Worker’s compensation
- Unemployment benefits
- Child support
- Retirement, pension, or profit sharing benefits
- Military or veterans benefits

-

Life insurance or other insurance
-

Disability, illness, medical or hospital benefits
-

Alimony, support or maintenance
-

Annuity contract benefits
-

Bodily injury or wrongful death awards
-

Other money (describe)
-

Wages (Do not check this box until you have first talked to your employer to see if he correctly calculated your exemption according to the formula under item 28 on the form entitled "SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED." Then check this box only if you believe your employer's calculation is incorrect.)
- b. Property:

.....

Professional books

.....

Burial plots

.....

Health aids

.....

Homestead, house, mobile home and related structures

.....

Jewelry

.....

Car, truck or motorcycle

.....

Tools and implements

.....

Appliances, furnishings, firearms, animals, musical instruments, books, clothes, family portraits and heirlooms

.....

Other property (describe)

.....

Defendant or Representative

History.

I.C., § 8-507C, as added by 1991, ch. 165, § 4, p. 395; am. 1998, ch. 73, § 1, p. 267; am. 2000, ch. 231, § 1, p. 645; am. 2003, ch. 44, § 1, p. 167; am. 2012, ch. 107, § 1, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107 updated the dollar amounts in the exemptions list.

8-509. Examination of garnishee.

JUDICIAL DECISIONS

Payments.

Collection agency has no right to funds mistakenly paid by debtor's employer to a second collection agency, where debtor also owed money on an account with the second collection agency. Collection agency's redress was with continuance of the original garnishment process. Medical Recovery Servs., LLC v. Bonneville Billing & Collections, Inc., — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 4 (Ct. App. Jan. 18, 2013).

CHAPTER 7

DEPOSIT IN COURT

SECTION.

8-705. Wage assignment for support and care
of delinquent child.

8-705. Wage assignment for support and care of delinquent child.

— In any proceeding where the court has ordered a parent or custodian to pay any amount for the care, support or maintenance of a child adjudged to be within the purview of chapter 5, title 20, Idaho Code, and through the adjudication has rendered a liability upon the parent or custodian to pay damages or to pay for the child’s support and care, the following procedure may be utilized for collection. The court may order the parent or custodian to assign a sum as the court may determine to be equitable or as may otherwise be provided by statute or contract to the county clerk, probation officer or other office of the court or county officer designated by the court to receive such payment. The assignment shall be that portion of salary or wages of the parent or custodian the court deems would be due in the future to apply on the amount ordered by the court for the care, support or maintenance of the delinquent child or for breach of contract caused by the child’s delinquency. The order shall be binding upon an employer and until further order of the court. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any attachment, execution or other assignment, unless otherwise ordered by the court. All sums collected pursuant to the provisions of this section shall be remitted as may be provided by law.

History.

I.C., § 8-705, as added by 1989, ch. 155, § 15, p. 371; am. 2004, ch. 23, § 1, p. 25; am. 2012, ch. 257, § 1, p. 709.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 257, deleted “legal guardian” following “parent” in four places.

TITLE 9

EVIDENCE

CHAPTER.

3. PUBLIC WRITINGS, §§ 9-337, 9-338, 9-340B — 9-340D, 9-340F, 9-343, 9-348 — 9-352.

CHAPTER.

14. ADMINISTRATION OF OATHS AND AFFIRMATIONS, § 9-1406.

CHAPTER 2

WITNESSES

9-202. Who may not testify.

JUDICIAL DECISIONS

Actions to Which Inapplicable.

Where respondent, the owner of property stored on decedent's land, sued appellants, decedent's son and his wife, for conversion after they sold respondent's property, subsection (3) of this section did not apply because

there was no claim against decedent's estate; decedent's son was not acting as a personal representative of the estate when he sold the portable buildings, and the estate was not a party in the conversion action. *Carpenter v. Turrell*, 148 Idaho 645, 227 P.3d 575 (2010).

9-203. Confidential relations and communications.

RESEARCH REFERENCES

A.L.R. — Construction and application of fiduciary duty exception to attorney-client privilege. 47 A.L.R.6th 255.

CHAPTER 3

PUBLIC WRITINGS

SECTION.

9-337. Definitions.

9-338. Public records — Right to examine.

9-340B. Records exempt from disclosure — Law enforcement records, investigatory records of agencies, evacuation and emergency response plans, worker's compensation.

9-340C. Records exempt from disclosure — Personnel records, personal information, health records, professional discipline. [Effective until January 1, 2014.]

9-340C. Records exempt from disclosure — Personnel records, personal information, health records, professional discipline. [Effective January 1, 2014.]

9-340D. Records exempt from disclosure —

SECTION.

Trade secrets, production records, appraisals, bids, proprietary information.

9-340F. Records exempt from disclosure — Draft legislation and supporting materials, tax commission, unclaimed property, petroleum clean water trust fund.

9-343. Proceedings to enforce right to examine or to receive a copy of records — Retention of disputed records.

9-348. Prohibition on distribution or sale of mailing or telephone number lists — Penalty.

9-349. Replevin — Public records — Improper or unlawful transfer or removal.

9-349A. [Amended and Redesignated.]

SECTION.

9-350. Confidentiality language required in this chapter.

9-351. Severability.

SECTION.

9-352. Idaho Code is property of the state of Idaho.

9-312. Authentication of judicial record.

JUDICIAL DECISIONS

Proof of Prior Convictions.

A judgment of conviction from a California court may be admitted and proved by satisfying the relevant provisions of the Idaho Rules of Evidence 902 and does not also need to satisfy the requirements of this section or 28

U.S.C.S. § 1738. This section is just one method by which a public record may be certified in accordance with Evidence Rule 902(4). *State v. Howard*, 150 Idaho 471, 248 P.3d 722 (2011).

9-325. Certified copies of writings.

JUDICIAL DECISIONS

Cited in: *State v. Marsh*, — Idaho —, 283 P.3d 107 (Ct. App. 2011).

9-337. Definitions. — As used in sections 9-337 through 9-347, Idaho Code:

(1) “Applicant” means any person formally seeking a paid or volunteer position with a public agency. “Applicant” does not include any person seeking appointment to a position normally filled by election.

(2) “Copy” means transcribing by handwriting, photocopying, duplicating machine and reproducing by any other means so long as the public record is not altered or damaged.

(3) “Custodian” means the person having personal custody and control of the public records in question. If no such designation is made by the public agency or independent public body corporate and politic, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.

(4) “Independent public body corporate and politic” means the Idaho housing and finance association as created in chapter 62, title 67, Idaho Code.

(5) “Inspect” means the right to listen, view and make notes of public records as long as the public record is not altered or damaged.

(6) “Investigatory record” means information with respect to an identifiable person, group of persons or entities compiled by a public agency or independent public body corporate and politic pursuant to its statutory authority in the course of investigating a specific act, omission, failure to act, or other conduct over which the public agency or independent public body corporate and politic has regulatory authority or law enforcement authority.

(7) “Law enforcement agency” means any state or local agency given law enforcement powers or which has authority to investigate, enforce, prose-

cute or punish violations of state or federal criminal statutes, ordinances or regulations.

(8) “Local agency” means a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof.

(9) “Person” means any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity.

(10) “Prisoner” means a person who has been convicted of a crime and is either incarcerated or on parole for that crime or who is being held in custody for trial or sentencing.

(11) “Public agency” means any state or local agency as defined in this section.

(12) “Public official” means any state, county, local district, independent public body corporate and politic or governmental official or employee, whether elected, appointed or hired.

(13) “Public record” includes, but is not limited to, any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.

(14) “Requester” means the person requesting examination and/or copying of public records pursuant to section 9-338, Idaho Code.

(15) “State agency” means every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia and the Idaho state historical society library and archives.

(16) “Writing” includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.

History.

I.C., § 9-337, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 1, p. 1146;

am. 2000, ch. 368, § 1, p. 1219; am. 2006, ch. 352, § 1, p. 1071; am. 2011, ch. 242, § 1, p. 651.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 242, added present subsection (14) and redesignated former subsections (14) and (15) as subsections (15) and (16), and, in present subsection (15), added “and the Idaho state historical society library archives.”

Compiler’s Notes.

The Idaho state archives is a division of the

Idaho state historical society. See http://history.idaho.gov/library_archives.html.

Effective Dates.

Section 3 of S.L. 2011, ch. 242 declared an emergency and provided that the provisions of the act shall apply to all current, ongoing and future public records requests. Approved April 7, 2011.

JUDICIAL DECISIONS

Public Record.

A writing is subject to the public records act, § 9-337 et seq., if it (1) contains information relating to the conduct or administration of the public's business and (2) was prepared, owned, used or retained by a governmental agency. *Ward v. Portneuf Med. Ctr., Inc.*, 150 Idaho 501, 248 P.3d 1236 (2011).

A contract executed by a county, a county prosecuting attorney, and a city, under which the prosecuting attorney would perform prosecutorial services for the city using county employees, is a public record subject to disclosure under the Public Records Act, § 9-337 et seq. *Henry v. Taylor*, 152 Idaho 155, 267 P.3d 1270 (2012).

9-338. Public records — Right to examine. — (1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.

(4) A public agency or independent public body corporate and politic may require that a request for public records be submitted to it in a writing that provides the requester's name, mailing address, e-mail address and telephone number. A request for public records and delivery of the public records may be made by electronic mail.

(5) The custodian shall make no inquiry of any person who requests a public record, except:

(a) To verify the identity of the requester in accordance with section 9-342, Idaho Code; or

(b) To ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 9-348, Idaho Code, or as otherwise provided by law; or

(c) As required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law.

(6) The custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted under this act.

(7) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(8) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the

custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency or independent public body corporate and politic having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(9) The public agency or independent public body corporate and politic may provide the requester information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous or require payment as provided in section 9-338(10), Idaho Code.

(10)(a) Except for fees that are authorized or prescribed under other provisions of Idaho law, no fee shall be charged for the first two (2) hours of labor in responding to a request for public records, or for copying the first one hundred (100) pages of paper records that are requested.

(b) A public agency or independent public body corporate and politic or public official may establish fees to recover the actual labor and copying costs associated with locating and copying documents if:

(i) The request is for more than one hundred (100) pages of paper records; or

(ii) The request includes records from which nonpublic information must be deleted; or

(iii) The actual labor associated with responding to requests for public records in compliance with the provisions of this chapter exceeds two (2) person hours.

(c) A public agency or independent public body corporate and politic or public official may establish a copying fee schedule. The fee may not exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law.

(d) For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or independent public body corporate and politic or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:

(i) The agency's direct cost of copying the information in that form;

(ii) The standard cost, if any, for selling the same information in the form of a publication;

(iii) The agency's cost of conversion, or the cost of conversion charged by a third party, if the existing electronic record is converted to another electronic form.

(e) Fees shall not exceed reasonable labor costs necessarily incurred in responding to a public records request. Fees, if charged, shall reflect the personnel and quantity of time that are reasonably necessary to process a request. Fees for labor costs shall be charged at the per hour pay rate of the lowest paid administrative staff employee or public official of the public agency or independent public body corporate and politic who is necessary and qualified to process the request. If a request requires redactions to be made by an attorney who is employed by the public agency or independent public body corporate and politic, the rate charged

shall be no more than the per hour rate of the lowest paid attorney within the public agency or independent public body corporate and politic who is necessary and qualified to process the public records request. If a request is submitted to a public agency or independent public body corporate and politic that does not have an attorney on staff, and requires redactions by an attorney, the rate shall be no more than the usual and customary rate of the attorney who is retained by the public agency or independent public body corporate and politic for that purpose.

(f) The public agency or independent public body corporate and politic shall not charge any cost or fee for copies or labor when the requester demonstrates that the requester's examination and/or copying of public records:

(i) Is likely to contribute significantly to the public's understanding of the operations or activities of the government;

(ii) Is not primarily in the individual interest of the requester including, but not limited to, the requester's interest in litigation in which the requester is or may become a party; and

(iii) Will not occur if fees are charged because the requester has insufficient financial resources to pay such fees.

(g) Statements of fees by a public agency or independent public body corporate and politic shall be itemized to show the per page costs for copies, and hourly rates of employees and attorneys involved in responding to the request, and the actual time spent on the public records request. No lump sum costs shall be assigned to any public records request.

(11) A requester may not file multiple requests for public records solely to avoid payment of fees. When a public agency or independent public body corporate and politic reasonably believes that one (1) or more requesters is segregating a request into a series of requests to avoid payment of fees authorized pursuant to this section, the public agency or independent public body corporate and politic may aggregate such requests and charge the appropriate fees. The public agency or independent public body corporate and politic may consider the time period in which the requests have been made in its determination to aggregate the related requests. A public agency or independent public body corporate and politic shall not aggregate multiple requests on unrelated subjects from one (1) requester.

(12) The custodian may require advance payment of fees authorized by this section. Any money received by the public agency or independent public body corporate and politic shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund. Any portion of an advance payment in excess of the actual costs of labor and copying incurred by the agency in responding to the request shall be returned to the requester.

(13) A public agency or independent public body corporate and politic shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(14) Nothing contained herein shall prevent a public agency or independent public body corporate and politic from disclosing statistical information

that is descriptive of an identifiable person or persons, unless prohibited by law.

(15) Nothing contained herein shall prevent a public agency or independent public body corporate and politic from providing a copy of a public record in electronic form if the record is available in electronic form and if the person specifically requests an electronic copy.

History.

I.C., § 9-338, as added by 1990, ch. 213, § 1, p. 480; am. 1997, ch. 80, § 1, p. 165; am. 1997, ch. 152, § 1, p. 432; am. 2000, ch. 342, § 2, p. 1146; am. 2006, ch. 103, § 1, p. 284; am. 2011, ch. 242, § 2, p. 651.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 242, rewrote the section to the extent that a detailed comparison is impracticable, adding present subsections (4), (9), (11), and (12).

emergency and provided that the provisions of the act shall apply to all current, ongoing and future public records requests. Approved April 7, 2011.

Effective Dates.

Section 3 of S.L. 2011, ch. 242 declared an

JUDICIAL DECISIONS

ANALYSIS

Determination of status.
Public record.

Determination of Status.

The determination of whether a document qualifies as a public record is based on the content of the document and surrounding circumstances as they existed at the time a request for that record was made. Ward v. Portneuf Med. Ctr., Inc., 150 Idaho 501, 248 P.3d 1236 (2011).

record at the time of a request and is not subject to any exemptions, its subsequent transfer to a nongovernmental entity does not affect its status as a public record. Ward v. Portneuf Med. Ctr., Inc., 150 Idaho 501, 248 P.3d 1236 (2011).

Public Record.

So long as a document qualifies as a public

Cited in: Doe v. State, — Idaho —, 290 P.3d 1277 (Ct. App. 2012).

RESEARCH REFERENCES

A.L.R. — Disclosure of electronic data under state public records and freedom of information acts. 54 A.L.R.6th 653.

Construction and application of public interest fee waiver provision of Freedom of Information Act (FOIA), 5 U.S.C.S. § 552(a)(4)(A)(iii). 47 A.L.R. Fed 2d 263.

9-340A. Records exempt from disclosure — Exemptions in federal or state law — Court files of judicial proceedings.

JUDICIAL DECISIONS

Cited in: Doe v. State, — Idaho —, 290 P.3d 1277 (Ct. App. 2012).

9-340B. Records exempt from disclosure — Law enforcement records, investigatory records of agencies, evacuation and emergency response plans, worker's compensation. — The following records are exempt from disclosure:

(1) Investigatory records of a law enforcement agency, as defined in section 9-337(7), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(2) Juvenile records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is petitioned or charged with an offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile was petitioned or charged and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(3) Records of the custody review board of the Idaho department of juvenile corrections, including records containing the names, addresses and written statements of victims and family members of juveniles, shall be exempt from public disclosure pursuant to section 20-533A, Idaho Code.

(4)(a) The following records of the department of correction:

(i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code;

(ii) Records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses;

(iii) Records that reflect future transportation or movement of a prisoner;

(iv) Records gathered during the course of the presentence investigation;

(v) Records of a prisoner, as defined in section 9-337(10), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(b) Records of buildings, facilities, infrastructures and systems held by or in the custody of any public agency only when the disclosure of such information would jeopardize the safety of persons or the public safety. Such records may include emergency evacuation, escape or other emergency response plans, vulnerability assessments, operation and security manuals, plans, blueprints or security codes. For purposes of this section "system" shall mean electrical, heating, ventilation, air conditioning and telecommunication systems.

(c) Records of the commission of pardons and parole shall be exempt from public disclosure pursuant to section 20-213A, Idaho Code, and section 20-223, Idaho Code. Records exempt from disclosure shall also include those containing the names, addresses and written statements of victims.

(5) Voting records of the sexual offender classification board. The written record of the vote to classify an offender as a violent sexual predator by each board member in each case reviewed by that board member shall be exempt from disclosure to the public and shall be made available upon request only to the governor, the chairman of the senate judiciary and rules committee, and the chairman of the house of representatives judiciary, rules and administration committee, for all lawful purposes.

(6) Records of the sheriff or Idaho state police received or maintained pursuant to sections 18-3302, 18-3302H and 18-3302K, Idaho Code, relating to an applicant or licensee except that any law enforcement officer and law enforcement agency, whether inside or outside the state of Idaho, may access information maintained in the license record system as set forth in section 18-3302K(13), Idaho Code.

(7) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons. For reasons of health and safety, best interests of the child or public interest, the department of health and welfare may provide for the disclosure of records of investigations associated with actions pursuant to the provisions of chapter 16, title 16, Idaho Code, prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children except any such records regarding adoptions shall remain exempt from disclosure.

(8) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(9) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(10) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

- (a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or
- (b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of

employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction; or

(e) Although a claimant's records maintained by the industrial commission, including medical and rehabilitation records, are otherwise exempt from public disclosure, the quoting or discussing of medical or rehabilitation records contained in the industrial commission's records during a hearing for compensation or in a written decision issued by the industrial commission shall be permitted; provided further, the true identification of the parties shall not be exempt from public disclosure in any written decision issued and released to the public by the industrial commission.

(11) Records of investigations compiled by the commission on aging involving vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to be abused, neglected or exploited.

(12) Criminal history records and fingerprints, as defined by section 67-3001, Idaho Code, and compiled by the Idaho state police. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.

(13) Records furnished or obtained pursuant to section 41-1019, Idaho Code, regarding termination of an appointment, employment, contract or other insurance business relationship between an insurer and a producer.

(14) Records of a prisoner or former prisoner in the custody of any state or local correctional facility, when the request is made by another prisoner in the custody of any state or local correctional facility.

(15) Except as provided in section 72-1007, Idaho Code, records of the Idaho industrial commission relating to compensation for crime victims under chapter 10, title 72, Idaho Code.

(16) Records or information identifying a complainant maintained by the department of health and welfare pursuant to section 39-3556, Idaho Code, relating to certified family homes, unless the complainant consents in writing to the disclosure or the disclosure of the complainant's identity is required in any administrative or judicial proceeding.

History.

I.C., § 9-340B, as added by 1999, ch. 30, § 3, p. 41; am. 1999, ch. 249, § 3, p. 638; am. 1999, ch. 308, § 1, p. 765; am. 2000, ch. 57, § 1, p. 120; am. 2000, ch. 342, § 4, p. 1146; am. 2000, ch. 367, § 1, p. 1216; am. 2000, ch. 469, § 19, p. 1450; am. 2001, ch. 48, § 1, p. 88; am. 2001, ch. 180, § 1, p. 606; am. 2001,

ch. 296, § 1, p. 1044; am. 2002, ch. 62, § 1, p. 132; am. 2002, ch. 136, § 1, p. 371; am. 2003, ch. 164, § 1, p. 462; am. 2004, ch. 378, § 1, p. 1135; am. 2006, ch. 282, § 1, p. 866; am. 2006, ch. 352, § 2, p. 1071; am. 2009, ch. 202, § 2, p. 650; am. 2011, ch. 311, § 24, p. 882; am. 2012, ch. 300, § 1, p. 821; am. 2013, ch. 242, § 3, p. 570.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 311, deleted "In accordance with section 18-8315, Idaho Code," from the beginning of the first sentence in subsection (5).

The 2012 amendment, by ch. 300, added the second sentence in subsection (7).

The 2013 amendment, by ch. 242, in subsection (6), inserted "and 18-3302K" and made a related change and added "except that any law enforcement officer and law enforcement agency, whether inside or outside the state of Idaho, may access information maintained in the license record system as set forth in section 18-3302K(13), Idaho Code."

Compiler's Notes.

Section 4 of S.L. 2013, ch. 242 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 2 of S.L. 2012, ch. 300 declared an emergency. Approved April 5, 2012.

RESEARCH REFERENCES

A.L.R. — Construction and application of exemption 7(E) of Freedom of Information Act ("FOIA"), 5 U.S.C.S. § 552(b)(7)(E), for records or information compiled for law enforcement purposes to extent that production of such law enforcement records or information would disclose techniques and procedures for

law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of law. 70 A.L.R. Fed. 2d 493.

9-340C. Records exempt from disclosure — Personnel records, personal information, health records, professional discipline. [Effective until January 1, 2014.] — The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. Names of applicants to classified or merit system positions shall not be disclosed to the public without the applicant's written consent. Disclosure of names as part of a background check is permitted. Names of the five (5) final applicants to all other positions shall be available to the public. If such group is less than five (5) finalists, then the entire list of applicants shall be available to the public. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system

staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency or independent public body corporate and politic pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency or independent public body corporate and politic, such as bonds, compiled by the public agency or independent public body corporate and politic pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records; and

(f) Military records as described in and pursuant to section 65-301, Idaho Code.

(5) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for people who are elderly, indigent or have mental or physical disabilities, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information, except that a person may agree, through written, informed consent, to waive the exemption so that a third party may obtain information pertaining to the person, unless access to the information by the person is restricted by subsection (3)(a), (3)(b) or (3)(d) of section 9-342, Idaho Code. Notwithstanding the provisions of section 9-342,

Idaho Code, a person may not review identifying information concerning an informant who reported to the department of labor a suspected violation by the person of the employment security law, chapter 13, title 72, Idaho Code, under an assurance of confidentiality. As used in this section and in chapter 13, title 72, Idaho Code, "employment security information" means any information descriptive of an identifiable person or persons that is received by, recorded by, prepared by, furnished to or collected by the department of labor or the industrial commission in the administration of the employment security law.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

- (a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;
- (b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;
- (c) Mortgage portfolio loan documents;
- (d) Records of a current or former employee other than the employee's duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. An employee or authorized representative may inspect and copy that employee's personnel records, except for material used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

(22) Records of the Idaho state bar lawyer assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-4901, Idaho Code.

(23) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

(24) Records contained in the court files, or other records prepared as part of proceedings for judicial authorization of sterilization procedures pursuant to chapter 39, title 39, Idaho Code.

(25) The physical voter registration card on file in the county clerk's office; however, a redacted copy of said card shall be made available consistent with the requirements of this section. Information from the voter registration card maintained in the statewide voter registration database, including age, will be made available except for the voter's driver's license number, date of birth and, upon a showing that the voter comes within the provisions of subsection (30) of this section or upon showing of good cause by the voter to the county clerk in consultation with the county prosecuting attorney, the physical residence address of the voter. For the purposes of this subsection good cause shall include the protection of life and property and protection of victims of domestic violence and similar crimes.

(26) File numbers, passwords and information in the files of the health care directive registry maintained by the secretary of state under section 39-4515, Idaho Code, are confidential and shall not be disclosed to any person other than to the person who executed the health care directive or the revocation thereof and that person's legal representatives, to the person who registered the health care directive or revocation thereof, and to physicians, hospitals, medical personnel, nursing homes, and other persons who have been granted file number and password access to the documents within that specific file.

(27) Records in an address confidentiality program participant's file as provided for in chapter 57, title 19, Idaho Code, other than the address designated by the secretary of state, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a court order, to a person identified in the order.

(28) Except as otherwise provided by law relating to the release of information to a governmental entity or law enforcement agency, any personal information including, but not limited to, names, personal and business addresses and phone numbers, sex, height, weight, date of birth, social security and driver's license numbers, or any other identifying numbers and/or information related to any Idaho fish and game licenses, permits and tags unless written consent is obtained from the affected person.

(29) Documents and records related to continuing education and recordkeeping violations that are maintained by the Idaho board of veterinary medicine under the provisions of section 54-2118(1)(b), Idaho Code, provided the requirements set forth therein are met.

(30) The Idaho residential street address and telephone number of an eligible law enforcement officer and such officer's residing household member(s) as provided for in chapter 58, title 19, Idaho Code, except under the following circumstances:

- (a) If directed by a court order, to a person identified in the court order;
- (b) If requested by a law enforcement agency, to the law enforcement agency;
- (c) If requested by a financial institution or title company for business purposes, to the requesting financial institution or title company; or
- (d) If the law enforcement officer provides written permission for disclosure of such information.

(31) Nothing in this section shall prohibit the release of information to the state controller as the state social security administrator as provided in section 59-1101A, Idaho Code.

(32) Personal information including, but not limited to, property values, personal and business addresses, phone numbers, dates of birth, social security and driver's license numbers or any other identifying numbers or information maintained by the administrator of the unclaimed property law set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection shall prohibit the release of names, last known city of residence, property value ranges and general property information by the administrator for the purpose of reuniting unclaimed property with its owner.

History.

I.C., § 9-340C, as added by 1999, ch. 30, § 4, p. 41; am. 1999, ch. 347, § 2, p. 926; am. 1999, ch. 395, § 3, p. 1095; am. 2000, ch. 58, § 1, p. 122; am. 2000, ch. 189, § 3, p. 465; am. 2000, ch. 194, § 2, p. 479; am. 2000, ch. 293, § 1, p. 1011; am. 2000, ch. 332, § 6, p. 1112; am. 2000, ch. 342, § 5, p. 1146; am. 2000, ch. 469, § 20, p. 1450; am. 2002, ch. 329, § 3, p. 928; am. 2002, ch. 363, § 2, p. 1023; am. 2003, ch. 16, § 1, p. 48; am. 2003, ch. 26, § 2, p. 95;

am. 2003, ch. 189, § 3, p. 511; am. 2004, ch. 163, § 1, p. 529; am. 2006, ch. 38, § 3, p. 105; am. 2006, ch. 67, § 1, p. 199; am. 2006, ch. 175, § 1, p. 535; am. 2006, ch. 352, § 3, p. 1071; am. 2007, ch. 360, § 11, p. 1061; am. 2008, ch. 99, § 5, p. 278; am. 2008, ch. 232, § 2, p. 706; am. 2010, ch. 104, § 2, p. 201; am. 2010, ch. 225, § 1, p. 501; am. 2010, ch. 235, § 3, p. 542; am. 2010, ch. 245, § 1, p. 629; am. 2011, ch. 151, § 7, p. 414; am. 2011, ch. 283, § 1, p. 766; am. 2012, ch. 309, § 1, p. 851.

STATUTORY NOTES

Amendments.

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 151, corrected the subsection reference in subsection (25); and redesignated the last two subsections as subsections (29) and (30).

The 2011 amendment, by ch. 283, added subsection (31), designated existing provisions as subsections (29) and (30), and updated an internal reference in subsection (25).

The 2012 amendment, by ch. 309, added subsection (32).

Compiler's Notes.

For this section as effective January 1, 2014, see the following section, also numbered § 9-340C.

The Idaho public records act, referred to at the end of paragraph (20)(d), is codified as § 9-337 et seq.

Effective Dates.

Section 4 of S.L. 2011, ch. 283 declared an emergency. Approved April 11, 2011.

9-340C. Records exempt from disclosure — Personnel records, personal information, health records, professional discipline. [Effective January 1, 2014.] — The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross

salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. Names of applicants to classified or merit system positions shall not be disclosed to the public without the applicant's written consent. Disclosure of names as part of a background check is permitted. Names of the five (5) final applicants to all other positions shall be available to the public. If such group is less than five (5) finalists, then the entire list of applicants shall be available to the public. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

- (a) Records of personal debt filed with a public agency or independent public body corporate and politic pursuant to law;
- (b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;
- (c) Records of ownership of financial obligations and instruments of a public agency or independent public body corporate and politic, such as bonds, compiled by the public agency or independent public body corporate and politic pursuant to law;
- (d) Records, with regard to the ownership of, or security interests in, registered public obligations;
- (e) Vital statistics records; and
- (f) Military records as described in and pursuant to section 65-301, Idaho Code.

(5) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of

administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for people who are elderly, indigent or have mental or physical disabilities, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information, except that a person may agree, through written, informed consent, to waive the exemption so that a third party may obtain information pertaining to the person, unless access to the information by the person is restricted by subsection (3)(a), (3)(b) or (3)(d) of section 9-342, Idaho Code. Notwithstanding the provisions of section 9-342, Idaho Code, a person may not review identifying information concerning an informant who reported to the department of labor a suspected violation by the person of the employment security law, chapter 13, title 72, Idaho Code, under an assurance of confidentiality. As used in this section and in chapter 13, title 72, Idaho Code, "employment security information" means any information descriptive of an identifiable person or persons that is received by, recorded by, prepared by, furnished to or collected by the department of labor or the industrial commission in the administration of the employment security law.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under sections 37-2726 and 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

- (a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;
- (b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;
- (c) Mortgage portfolio loan documents;
- (d) Records of a current or former employee other than the employee's duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association employee or applicant including, but not limited to, information regarding

sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. An employee or authorized representative may inspect and copy that employee's personnel records, except for material used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

(22) Records of the Idaho state bar lawyer assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-4901, Idaho Code.

(23) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

(24) Records contained in the court files, or other records prepared as part of proceedings for judicial authorization of sterilization procedures pursuant to chapter 39, title 39, Idaho Code.

(25) The physical voter registration card on file in the county clerk's office; however, a redacted copy of said card shall be made available consistent with the requirements of this section. Information from the voter registration card maintained in the statewide voter registration database, including age, will be made available except for the voter's driver's license number, date of birth and, upon a showing that the voter comes within the provisions of subsection (30) of this section or upon showing of good cause by the voter to the county clerk in consultation with the county prosecuting attorney, the physical residence address of the voter. For the purposes of this subsection good cause shall include the protection of life and property and protection of victims of domestic violence and similar crimes.

(26) File numbers, passwords and information in the files of the health care directive registry maintained by the secretary of state under section 39-4515, Idaho Code, are confidential and shall not be disclosed to any person other than to the person who executed the health care directive or the revocation thereof and that person's legal representatives, to the person who registered the health care directive or revocation thereof, and to physicians, hospitals, medical personnel, nursing homes, and other persons who have been granted file number and password access to the documents within that specific file.

(27) Records in an address confidentiality program participant's file as provided for in chapter 57, title 19, Idaho Code, other than the address designated by the secretary of state, except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a court order, to a person identified in the order.

(28) Except as otherwise provided by law relating to the release of information to a governmental entity or law enforcement agency, any personal information including, but not limited to, names, personal and business addresses and phone numbers, sex, height, weight, date of birth, social security and driver's license numbers, or any other identifying numbers and/or information related to any Idaho fish and game licenses, permits and tags unless written consent is obtained from the affected person.

(29) Documents and records related to continuing education and recordkeeping violations that are maintained by the Idaho board of veterinary medicine under the provisions of section 54-2118(1)(b), Idaho Code, provided the requirements set forth therein are met.

(30) The Idaho residential street address and telephone number of an eligible law enforcement officer and such officer's residing household member(s) as provided for in chapter 58, title 19, Idaho Code, except under the following circumstances:

(a) If directed by a court order, to a person identified in the court order;

(b) If requested by a law enforcement agency, to the law enforcement agency;

(c) If requested by a financial institution or title company for business purposes, to the requesting financial institution or title company; or

(d) If the law enforcement officer provides written permission for disclosure of such information.

(31) All information exchanged between the Idaho transportation department and insurance companies, any database created, all information contained in the verification system and all reports, responses or other information generated for the purposes of the verification system, pursuant to section 49-1234, Idaho Code.

(32) Nothing in this section shall prohibit the release of information to the state controller as the state social security administrator as provided in section 59-1101A, Idaho Code.

[(33)](32) Personal information including, but not limited to, property values, personal and business addresses, phone numbers, dates of birth, social security and driver's license numbers or any other identifying numbers or information maintained by the administrator of the unclaimed property law set forth in chapter 5, title 14, Idaho Code. Nothing in this subsection shall prohibit the release of names, last known city of residence, property value ranges and general property information by the administrator for the purpose of reuniting unclaimed property with its owner.

History.

I.C., § 9-340C, as added by 1999, ch. 30, § 4, p. 41; am. 1999, ch. 347, § 2, p. 926; am. 1999, ch. 395, § 3, p. 1095; am. 2000, ch. 58, § 1, p. 122; am. 2000, ch. 189, § 3, p. 465; am. 2000, ch. 194, § 2, p. 479; am. 2000, ch. 293, § 1, p. 1011; am. 2000, ch. 332, § 6, p. 1112; am. 2000, ch. 342, § 5, p. 1146; am. 2000, ch. 469, § 20, p. 1450; am. 2002, ch. 329, § 3, p. 928; am. 2002, ch. 363, § 2, p. 1023; am. 2003,

ch. 16, § 1, p. 48; am. 2003, ch. 26, § 2, p. 95; am. 2003, ch. 189, § 3, p. 511; am. 2004, ch. 163, § 1, p. 529; am. 2006, ch. 38, § 3, p. 105; am. 2006, ch. 67, § 1, p. 199; am. 2006, ch. 175, § 1, p. 535; am. 2006, ch. 352, § 3, p. 1071; am. 2007, ch. 360, § 11, p. 1061; am. 2008, ch. 99, § 5, p. 278; am. 2008, ch. 232, § 2, p. 706; am. 2010, ch. 104, § 2, p. 201; am. 2010, ch. 225, § 1, p. 501; am. 2010, ch. 235, § 3, p. 542; am. 2010, ch. 245, § 1, p. 629; am.

2011, ch. 151, § 7, p. 414; am. 2011, ch. 283, § 1, p. 766; a.m. 2012, ch. 103, § 2, p. 275; am. 2012, ch. 309, § 1, p. 851.

STATUTORY NOTES

Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 103, added new subsection (31) and redesignated former subsection (31) as subsection (32).

The 2012 amendment, by ch. 309, added subsection [(33)](32).

Compiler's Notes.

For this section as effective until January 1, 2014, see the preceding section, also numbered § 9-340C.

Section 1 of S.L. 2012, ch. 309 added a subsection (32) to the section. However, be-

cause S.L. 2012, ch. 103, § 2 added a new subsection (31) to this section and redesignated the former subsection (31) as subsection (32), the new subsection added by S.L. 2012, ch. 309, § 1 has been redesignated as subsection (33) through the use of brackets.

The Idaho public records act, referred to at the end of paragraph (20)(d), is codified as § 9-337 et seq.

Effective Dates.

Section 3 of S.L. 2012, ch. 103, as amended by S.L. 2013, ch. 291, § 2, provided that section 2 of S.L. 2012, ch. 103, amending this section, should take effect on and after January 1, 2014.

9-340D. Records exempt from disclosure — Trade secrets, production records, appraisals, bids, proprietary information. — The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(6) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(7) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code, nor shall this exemption apply to information regarding specific property locations subject to an open burning of crop residue pursuant to section 39-114, Idaho Code, names of persons responsible for the open burn, acreage and crop type to be burned, and time frames for burning.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho oilseed commission and pertaining to the individual production records of oilseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a

public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.

(19) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code.

(20) Records, data, information and materials collected, developed, generated, ascertained or discovered during the course of academic research at public institutions of higher education if the disclosure of such could reasonably affect the conduct or outcome of the research, or the ability of the public institution of higher education to patent or copyright the research or protect intellectual property.

(21) Records, data, information and materials collected or utilized during the course of academic research at public institutions of higher education provided by any person or entity other than the public institution of higher education or a public agency.

(22) The exemptions from disclosure provided in subsections (20) and (21) of this section shall apply only until the academic research is publicly released, copyrighted or patented, or until the academic research is completed or terminated. At such time, the records, data, information, and materials shall be subject to public disclosure unless: (a) another exemption in this chapter applies; (b) such information was provided to the institution subject to a written agreement of confidentiality; or (c) public disclosure would pose a danger to persons or property.

(23) The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research project that is otherwise subject to public disclosure, such as the nature of the academic research, the name of the researcher, and the amount and source of the funding provided for the project.

(24) Records of a county assessor, the state tax commission, a county board of equalization or the state board of tax appeals containing the following information: (i) lists of personal property required to be filed pursuant to section 63-302, Idaho Code, and operating statements required to be filed pursuant to section 63-404, Idaho Code, and (ii) confidential commercial or financial information including trade secrets. Except with respect to lists of personal property required to be filed pursuant to section 63-302, Idaho Code, and the operator statements required to be filed pursuant to section 63-404, Idaho Code, it shall be the responsibility of the taxpayer to give notice of its claim to exemption by stamping or marking each page or the first page of each portion of documents so claimed. No records that are exempt pursuant to this subsection shall be disclosed without the consent of the taxpayer except as follows:

(a) To any officer, employee or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law or when relevant to any proceeding thereunder.

(b) In the publication of statistics or reports as long as the statistics or reports do not reasonably lead to the identification of the specific taxpayer or information submitted by taxpayers exempt pursuant to this subsection.

(c) To the board of tax appeals or the district court as evidence or otherwise in connection with an appeal of the taxpayer's property tax assessment, but only if the board or the court, as applicable, has entered a protective order specifying that the taxpayer information may not be disclosed by any person conducting or participating in the action or proceeding, except as authorized by the board or the court in accordance with applicable law.

(d) Nothing in this subsection shall prevent disclosure of the following information:

- (i) Name and mailing address of the property owner;
- (ii) A parcel number;
- (iii) A legal description of real property;
- (iv) The square footage and acreage of real property;
- (v) The assessed value of taxable property;
- (vi) The tax district and the tax rate; and
- (vii) The total property tax assessed.

(25) Results of laboratory tests which have no known adverse impacts to human health conducted by the Idaho state department of agriculture animal health laboratory, related to diagnosis of animal diseases of individual animals or herds, on samples submitted by veterinarians or animal owners unless:

- (a) The laboratory test results indicate the presence of a state or federally reportable or regulated disease in animals;
- (b) The release of the test results is required by state or federal law; or
- (c) The test result is identified as representing a threat to animal or human health or to the livestock industry by the Idaho state department of agriculture or the United States department of agriculture. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding, or the duty of any person to report contagious or infectious diseases as required by state or federal law.

(26) Results of laboratory tests conducted by the Idaho state department of agriculture seed laboratory on samples submitted by seed producers or seed companies. Nothing in this subsection shall limit the use which can be made, or availability of such information pursuant to the provisions of subsections (9) and (10) of section 22-418, Idaho Code.

(27) For policies that are owned by private persons, and not by a public agency of the state of Idaho, records of policies, endorsements, affidavits and any records that discuss policies, endorsements and affidavits that may be required to be filed with or by a surplus line association pursuant to chapter 12, title 41, Idaho Code.

(28) Individual financial statements of a postsecondary educational institution or a proprietary school submitted to the state board of education, its director or a representative thereof, for the purpose of registering the postsecondary educational institution or proprietary school pursuant to section 33-2402 or 33-2403, Idaho Code, or provided pursuant to an administrative rule of the board adopted pursuant to such sections.

History.

I.C., § 9-340D, as added by 1999, ch. 30, § 5, p. 41; am. 2000, ch. 342, § 6, p. 1146; am. 2001, ch. 383, § 2, p. 1340; am. 2004, ch. 204, § 2, p. 621; am. 2004, ch. 205, § 2, p. 627; am. and redesiɡ. 2005, ch. 25, § 12, p. 82; am. 2005, ch. 58, § 1, p. 213; am. 2005, ch. 276,

§ 1, p. 848; am. 2006, ch. 16, § 1, p. 42; am. 2007, ch. 60, § 15, p. 143; am. 2007, ch. 88, § 1, p. 240; am. 2007, ch. 205, § 1, p. 628; am. 2007, ch. 206, § 1, p. 632; am. 2008, ch. 27, § 3, p. 41; am. 2008, ch. 71, § 2, p. 187; am. 2010, ch. 222, § 1, p. 495; am. 2011, ch. 245, § 1, p. 657.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 245, in subsection (14), deleted “as defined in section 9-803, Idaho Code” following “environmental agency”; and rewrote subsection (24), which formerly read: “Records of a county assessor containing information showing the income and expenses of a taxpayer, which informa-

tion was provided to the assessor by the taxpayer to permit the assessor to determine the value of property of the taxpayer.”

Effective Dates.

Section 3 of S.L. 2011, ch. 245 declared an emergency. Approved April 8, 2011.

9-340F. Records exempt from disclosure — Draft legislation and supporting materials, tax commission, unclaimed property, petroleum clean water trust fund. — The following records are exempt from disclosure:

(1) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(2) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(3) Records consisting of draft congressional and legislative redistricting plans and documents specifically related to such draft redistricting plans or research requests submitted to the commission staff by a member of the commission for reapportionment for the purpose of placing such draft redistricting plan into form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of confidentiality provided by this subsection.

(4) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(5) Records that identify the method by which the administrator of the unclaimed property law set forth in chapter 5, title 14, Idaho Code, selects reports for audit review or conducts audit review of such reports and the identity of individuals or entities under audit.

(6) Underwriting and claims records of the Idaho petroleum clean water trust fund obtained pursuant to section 41-4905, 41-4909, 41-4911A, 41-4912 or 41-4912A, Idaho Code. Provided however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of environmental quality, or other regulatory agencies of information necessary to satisfy an insured's corrective action requirement under applicable federal or state standards in the event of a release into the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to section 41-4919, 41-4925A, 41-4928, 41-4930, 41-4932, 41-4937 or 41-4938, Idaho Code.

History.

I.C., § 9-340F, as added by 1999, ch. 30,
§ 7, p. 41; am. 2000, ch. 229, § 1, p. 643; am.

2001, ch. 103, § 1, p. 253; am. 2003, ch. 96,
§ 1, p. 281; am. 2012, ch. 309, § 2, p. 851.

STATUTORY NOTES**Amendments.**

The 2012 amendment, by ch. 309, inserted
"unclaimed property" in the section heading,

added subsection (5), and renumbered former
subsection (5) as subsection (6).

9-343. Proceedings to enforce right to examine or to receive a copy of records — Retention of disputed records. — (1) The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency or independent public body corporate and politic to make the information available for public inspection in accordance with the provisions of sections 9-337 through 9-348, Idaho Code. The petition contesting the public agency's or independent public body corporate and politic's decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency or independent public body corporate and politic. In cases in which the records requested are claimed as exempt pursuant to section 9-340D(1) or (24), Idaho Code, the petitioner shall be required to name as a party and serve the person or entity that filed or provided such documents to the agency, and such person or entity shall have standing to oppose the request for disclosure and to support the decision of the agency to deny the request. The time for responsive pleadings and for hearings in such proceedings shall be set by the court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing.

(2) The public agency or independent public body corporate and politic shall keep all documents or records in question until the end of the appeal period, until a decision has been rendered on the petition, or as otherwise statutorily provided, whichever is longer.

(3) Nothing contained in sections 9-337 through 9-348, Idaho Code, shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the

law and rules of evidence and of discovery governing such proceedings. Additionally, in any criminal appeal or post-conviction civil action, sections 9-335 through 9-348, Idaho Code, shall not make available the contents of prosecution case files where such material has previously been provided to the defendant nor shall sections 9-335 through 9-348, Idaho Code, be available to supplement, augment, substitute or supplant discovery procedures in any other federal, civil or administrative proceeding.

History.

I.C., § 9-343, as added by 1990, ch. 213, § 1, p. 480; am. 1992, ch. 200, § 3, p. 618; am.

2000, ch. 342, § 9, p. 1146; am. 2001, ch. 101, § 1, p. 251; am. 2011, ch. 245, § 2, p. 657.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 245, added the third sentence in subsection (1).

Effective Dates.

Section 3 of S.L. 2011, ch. 245 declared an emergency. Approved April 8, 2011.

JUDICIAL DECISIONS

Retention of Records.

Even if a public agency is sold to a private entity, the agency has an affirmative duty to retain all records during the pendency of a petition to compel production of such records. A public agency shall keep all documents or records in question until the end of the appeal period, until a decision has been rendered on

the petition, or as otherwise statutorily provided, whichever is longer. This duty is triggered at the time a petition is filed and continues until the petition is resolved, even if a legitimate sale is in the works. *Ward v. Portneuf Med. Ctr., Inc.*, 150 Idaho 501, 248 P.3d 1236 (2011).

RESEARCH REFERENCES

A.L.R. — Allowance of punitive damages in state freedom of information actions. 13 A.L.R.6th 721.

9-344. Order of the court — Court costs and attorney fees.

JUDICIAL DECISIONS

Exclusive Remedy.

This section sets forth the standard for awarding reasonable costs and attorney fees in actions pursuant to the Public Records Act,

§ 9-337 et seq.; therefore, §§ 12-117 and 12-121 do not apply. *Henry v. Taylor*, 152 Idaho 155, 267 P.3d 1270 (2012).

9-345. Additional penalty.

RESEARCH REFERENCES

A.L.R. — Allowance of punitive damages in state freedom of information actions. 13 A.L.R.6th 721.

9-348. Prohibition on distribution or sale of mailing or telephone number lists — Penalty. — (1) Except as provided in subsections (2), (3), (4), (5), (6), (7), (8) and (9) of this section, in order to protect the privacy of

those who deal with public agencies or an independent public body corporate and politic:

(a) No agency or independent public body corporate and politic may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and

(b) No list of persons prepared by the agency or independent public body corporate and politic may be used as a mailing list or a telephone number list except by the agency or independent public body corporate and politic or another agency without first securing the permission of those on the list.

(2) Except as may be otherwise provided in this chapter, this section does not prevent an individual from compiling a mailing list or a telephone number list by examination or copying of public records, original documents or applications which are otherwise open to public inspection.

(3) The provisions of this section do not apply to the lists of registered electors compiled pursuant to title 34, Idaho Code, or to lists of the names of employees governed by chapter 53, title 67, Idaho Code.

(4) The provisions of this section shall not apply to agencies which issue occupational or professional licenses.

(5) This section does not apply to the right of access either by Idaho law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(6) This section does not apply to a corporate information list developed by the office of the secretary of state containing the name, address, registered agent, officers and directors of corporations authorized to do business in this state or to a business information list developed by the department of commerce containing the name, address, telephone number or other relevant information of Idaho businesses or individuals requesting information regarding the state of Idaho or to business lists developed by the department of agriculture, division of marketing and development, used to promote food and agricultural products produced in Idaho.

(7) This section does not apply to lists to be used for ordinary utility purposes which are requested by a person who supplies utility services in this state. Ordinary utility purposes, as used in this chapter only, do not include marketing or marketing research.

(8) This section does not apply to lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency.

(9) This section does not apply to student directory information provided by colleges, universities, secondary schools and school districts to military recruiters for military recruiting purposes pursuant to the requirements of federal laws.

(10) Nothing in this section shall prohibit the release of information to the state controller as the state social security administrator as provided in section 59-1101A, Idaho Code.

(11) If a court finds that a person or public official has deliberately and in bad faith violated the provisions of subsection (1)(a) or (1)(b) of this section, the person or public official shall be liable for a civil penalty assessed by the

court in an amount not in excess of one thousand dollars (\$1,000) which shall be paid into the general account.

History.

I.C., § 9-348, as added by 1992, ch. 279, § 1, p. 856; am. 1993, ch. 117, § 1, p. 294; am. 1994, ch. 398, § 1, p. 1261; am. 1997, ch. 152,

§ 2, p. 432; am. 2000, ch. 342, § 12, p. 1146; am. 2003, ch. 310, § 1, p. 851; am. 2011, ch. 283, § 2, p. 766.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 283, added subsection (10) and redesignated former subsection (10) as subsection (11).

Effective Dates.

Section 4 of S.L. 2011, ch. 283 declared an emergency. Approved April 11, 2011.

9-349. Replevin — Public records — Improper or unlawful transfer or removal. — (1) Public records of the state and/or territory of Idaho are the property of the citizens of the state in perpetuity and they may not be improperly or unlawfully transferred or removed from their proper custodian. For purposes of this section, the terms “public record” and “record,” or plurals thereof, shall have the same meaning as “public record” as provided in section 9-337, Idaho Code.

(2) For the purpose of this section, where public records of a county, local district, or independent public body corporate and politic thereof are involved, all references to the state archivist also refer to any responsible public official or records custodian and all references to the attorney general also refer to county prosecutors.

(3) Whenever the state archivist or their designee has reasonable grounds to believe that records belonging to the state, county, local district, or independent public body corporate and politic thereof, are in the possession of a person or entity not authorized by law to possess those records, and such possession was acquired on or after July 1, 2011, he or she may issue a written notice demanding that person or entity to do either of the following within ten (10) calendar days of receiving the notice:

- (a) Return the records to the office of origin or the Idaho state archives; or
- (b) Respond in writing and declare why the records do not belong to the state or a local agency.

(4) The notice and demand shall identify the records claimed to belong to the state or local agency with reasonable specificity, and shall specify that the state archivist may undertake legal action to recover the records if the person or entity fails to respond in writing within the required time or does not adequately demonstrate that the records do not belong to the state or a local agency.

(5) If a person or entity that receives a written notice and demand from the state archivist pursuant to this chapter fails to deliver the described records, fails to respond to the notice and demand within the required time, or does not adequately demonstrate that the records do not belong to the state or a local agency, the state archivist may ask the attorney general to petition a court of competent jurisdiction for an order requiring the return of the records.

(6) The court may issue any order necessary to protect the records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the records, and may order that the records be surrendered into the custody of the state archivist pending the court's decision on the petition.

(7) After a hearing, and upon a finding that the specified records are in the possession of a person or entity not authorized by law to possess the records, the court shall order the records to be delivered to the state archivist or other official designated by the court.

(8) If the attorney general recovers a record under this section, the court may award attorney's fees and court costs.

(9) Notwithstanding any other provision of this section, any public record that is in the custody of an organization or institution shall not be subject to the provisions of this section provided:

(a) That professional standards recognized by the society of American archivists for the management and preservation of historical records are maintained; and

(b) Such records are accessible to the public in a manner consistent with sections 9-337 through 9-352, inclusive, Idaho Code.

(10) When a record is returned pursuant to subsection (3)(a) of this section, upon the request of the person, organization or institution that returned the record, the record custodian that receives the record shall issue to that person, organization or institution a copy or digital image of the record which shall be certified as a true copy of the record that was returned to the state or local agency, and dated on the same day the record was returned.

History.

I.C., § 9-349, as added by 2011, ch. 302,
§ 1, p. 866.

STATUTORY NOTES

Compiler's Notes.

Former § 9-349 was redesignated as § 9-350 by S.L. 2011, ch. 302, § 2, effective July 1, 2011.

9-349A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 9-349A was redesignated as § 9-351 by S.L. 2011, ch. 302, § 3, effective July 1, 2011.

9-350. Confidentiality language required in this chapter. — On and after January 1, 1996, any statute which is added to the Idaho Code and provides for the confidentiality or closure of any public record or class of public records shall be placed in this chapter. Any statute which is added to the Idaho Code on and after January 1, 1996, and which provides for confidentiality or closure of a public record or class of public records and is located at a place other than this chapter shall be null, void and of no force

and effect regarding the confidentiality or closure of the public record and such public record shall be open and available to the public for inspection as provided in this chapter.

History. § 1, p. 437; am. and redesign. 2011, ch. 302,
I.C., § 9-349, as added by 1996, ch. 122, § 2, p. 866.

STATUTORY NOTES

Amendments. The 2011 amendment, by ch. 302, redesignated this section, which was formerly compiled as § 9-349.

Compiler's Notes. Former § 9-350 was redesignated as § 9-352 by S.L. 2011, ch. 302, § 4, effective July 1, 2011.

9-351. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

History. § 2, p. 437; am. and redesign. 2005, ch. 25,
I.C., § 9-348, as added by 1990, ch. 213, § 13, p. 82; am. and redesign. 2011, ch. 302,
§ 1, p. 480; am. and redesign. 1992, ch. 279, § 3, p. 866.
§ 2, p. 856; am. and redesign. 1996, ch. 122,

STATUTORY NOTES

Amendments. The 2011 amendment, by ch. 302, redesignated this section, which was formerly compiled as § 9-349A.

is codified as over 100 sections throughout the code. Here the reference should probably be to "this chapter," meaning chapter 3, title 9, Idaho Code.

Compiler's Notes.
"This act" refers to S.L. 1990, ch. 213 which

9-352. Idaho Code is property of the state of Idaho. — (1) The Idaho Code is the property of the state of Idaho, and the state of Idaho and the taxpayers shall be deemed to have a copyright on the Idaho Code. If a person reproduces or distributes the Idaho Code for the purpose of direct or indirect commercial advantage, the person shall owe to the Idaho code commission, as the agent of the state of Idaho, a royalty fee in addition to the fee charged for copying the Idaho Code. Any person who reproduces or distributes the Idaho Code in violation of the provisions of this section, shall be deemed to be an infringer of the state of Idaho's copyright. The Idaho code commission, through the office of the attorney general, is entitled to institute an action for any infringement of that particular right committed while the Idaho code commission or its designated agent has custody of the Idaho Code.

(2) A court having jurisdiction of a civil action arising under this section may grant such relief as it deems appropriate. At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies claimed to have been made or used in violation of the Idaho code commission's copyright pursuant to this section.

(3) An infringer of the state of Idaho's copyright pursuant to this section is liable for any profits the infringer has incurred by obtaining the Idaho Code for commercial purposes or is liable for statutory damages as provided in subsection (4) of this section.

(4) The Idaho code commission, as agent of the copyright owner, may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to the Idaho Code for which any one (1) infringer is liable individually, or for which any two (2) or more infringers are liable jointly and severally, in a sum of not less than two hundred fifty dollars (\$250) or more than ten thousand dollars (\$10,000), as the court considers just.

(5) In any civil action under this section, the court may allow the recovery of full costs by or against any party and may also award reasonable attorney's fees to the prevailing party as part of the costs.

(6) The Idaho code commission is hereby authorized to license and charge fees for the use of the Idaho Code. The Idaho code commission may grant a license for the use of the Idaho Code to a public agency in the state and waive all or a portion of the fees. All fees recovered by the Idaho code commission shall be deposited in the general account.

History.

I.C., § 9-350, as added by 1993, ch. 389,

§ 1, p. 1444; am. and redesign. 2011, ch. 302,

§ 4, p. 866.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 302, redesign-

nated this section, which was formerly compiled as § 9-350.

CHAPTER 5

INDISPENSABLE EVIDENCE — STATUTE OF FRAUDS

9-503. Transfers of real property to be in writing.

JUDICIAL DECISIONS

ANALYSIS

Applicability.

Auctions.

Settlement agreement.

Sufficiency of writing.

Applicability.

Grant of summary judgment in favor of the purchaser in a lawsuit to recover money deposits from the sellers after two codependent land sale contracts involving the parties failed to close was proper, in part because the district court's citation to this section was irrelevant. The statute of frauds does not come into play; the contracts are integrated,

they had not been extended, modified, or renewed by any writing conforming with the amendments and waivers provision, and any argument to the contrary was without merit. *Buku Props., LLC v. Clark*, — Idaho —, 291 P.3d 1027 (2012).

Auctions.

The statute of frauds applies to auctions of

land in the same manner as any other land transaction. *Wakelum v. Hagood*, 151 Idaho 688, 263 P.3d 742 (2011).

While a sale of land is not taken outside the statute of frauds just because it involves an auction, the auction terms agreed upon by the seller, in a writing, can be considered in determining whether the writing satisfies the statute of frauds. *Wakelum v. Hagood*, 151 Idaho 688, 263 P.3d 742 (2011).

When landowner signed a representation agreement, authorizing an absolute auction of his properties on the terms therein stated, all terms essential to a land sale contract were contained within that agreement. While the representation agreement did not specifically state the purchase price for any parcel, or the name of the buyer or buyers who would submit the highest bid thereon, the agreement contained an appropriate provision for reducing those material terms to certainty. *Wakelum v. Hagood*, 151 Idaho 688, 263 P.3d 742 (2011).

Settlement Agreement.

A settlement agreement which includes a

deed of trust falls within the scope of this section and must be in writing; but a party may be equitably estopped from asserting the statute of frauds where his attorney had an apparent authority to enter the oral agreement and the second party had no notice that the attorney lacked the authority to enter the binding agreement *Ogden v. Griffith*, 149 Idaho 489, 236 P.3d 1249 (2010).

Sufficiency of Writing.

A property description in a real estate sales contract that consisted solely of a physical address did not satisfy the statute of frauds. *In re McMurdie*, 448 B.R. 826 (Bankr. D. Idaho 2010).

Annexation agreement between a city and a property owner created an enforceable lien under § 9-505(4) and this section because the agreement and its exhibits adequately described the location, quantity, and exterior boundaries of the property. It was not necessary to provide specific descriptions of each lot within the planned subdivision. *Old Cutters, Inc. v. City of Hailey* (In re Old Cutters, Inc.), 488 B.R. 130 (Bankr. D. Idaho 2012).

RESEARCH REFERENCES

A.L.R. — Sufficiency of description of terms and conditions of lease, or lease provision, so

as to comply with statute of frauds. 12 A.L.R.6th 123.

9-505. Certain agreements to be in writing.

JUDICIAL DECISIONS

ANALYSIS

Annexation agreement.
Real estate contract.

Annexation Agreement.

Annexation agreement between a city and a property owner created an enforceable lien under subsection (4) of this section and § 9-503 because the agreement and its exhibits adequately described the location, quantity, and exterior boundaries of the property. It was not necessary to provide specific descriptions of each lot within the planned subdivision. *Old Cutters, Inc. v. City of Hailey* (In re Old Cutters, Inc.), 488 B.R. 130 (Bankr. D. Idaho 2012).

Real Estate Contract.

Where a real estate development agreement provided the existing legal description of the entire property and identified a specific amount of completed lots that were to be developed and sold by the debtor to the other contracting party within each portion of the parcel, the agreement contained a sufficient description of the property to satisfy this

section. *Gugino v. Kastera, LLC* (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

To satisfy the statute of frauds, not only must an agreement for the sale of real property be in writing and subscribed by the party to be charged, but the writing must also contain an adequate description of the property, either in terms or by reference, so that the property can be identified without resort to parol evidence. *Gugino v. Kastera, LLC* (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

A property description in a real estate sales contract that consisted solely of a physical address did not satisfy the statute of frauds. *In re McMurdie*, 448 B.R. 826 (Bankr. D. Idaho 2010).

Cited in: *Apple's Mobile Catering, LLC v. O'Dell*, 149 Idaho 211, 233 P.3d 142 (2010); *Wash. Fed. Sav. v. Van Engelen*, — Idaho —, 289 P.3d 50 (2012).

RESEARCH REFERENCES

A.L.R. — Sufficiency of description of terms and conditions of lease, or lease provision, so as to comply with statute of frauds. 12 A.L.R.6th 123.

CHAPTER 14

ADMINISTRATION OF OATHS AND AFFIRMATIONS

SECTION.

9-1406. Certification or declaration under penalty of perjury.

9-1401. Who may administer oaths.

JUDICIAL DECISIONS

Cited in: First Fed. Sav. Bank of Twin Falls v. Riedesel Eng'g, Inc. — Idaho —, — P.3d —, 2012 Ida. LEXIS 190 (Sept. 14, 2012).

9-1406. Certification or declaration under penalty of perjury. —

(1) Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to a law of this state, any matter is required or permitted to be supported, evidenced, established or proved by the sworn statement, declaration, verification, certificate, oath, affirmation or affidavit, in writing, of the person making the same, other than a deposition, an oath of office or an oath required to be taken before a specified official other than a notary public, such matter may with like force and effect be supported, evidenced, established or proven by the unsworn certification or declaration, in writing, which is subscribed by such person and is in substantially the following form:

“I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.”

.....

(Date) (Signature)

(2) This section shall not apply to acknowledgments.

History.

I.C., § 9-1406, as added by 2013, ch. 259, § 1, p. 636.

STATUTORY NOTES

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

TITLE 10

ISSUES, TRIAL AND JUDGMENT IN CIVIL ACTIONS

CHAPTER.

11. MANNER OF GIVING AND ENTERING JUDGMENT
— LIEN AND SATISFACTION, §§ 10-1110, 10-1111.

CHAPTER 11

MANNER OF GIVING AND ENTERING JUDGMENT — LIEN AND SATISFACTION

SECTION.

- 10-1110. Filing transcript of judgments —
Lien acquired.

SECTION.

- 10-1111. Renewal of judgment — Lien.

10-1110. Filing transcript of judgments — Lien acquired. — A transcript or abstract of any judgment or decree of any court of this state or any court of the United States the enforcement of which has not been stayed as provided by law, if rendered within this state, certified by the clerk having custody thereof, may be recorded with the recorder of any county of this state, who shall immediately record and docket the same as by law provided, and from the time of such recording, and not before, the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien; provided that where a transcript or abstract is recorded of any judgment or decree of divorce or separate maintenance making provision for installment or periodic payment of sums for maintenance of children or alimony or allowance for wife's support, such judgment or decree shall be a lien only in an amount for payments so provided, delinquent or not made when due. The lien resulting from recording of a judgment other than for support of a child continues five (5) years from the date of the judgment, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law. A lien arising from the delinquency of a payment due under a judgment for support of a child issued by an Idaho court continues until five (5) years after the death or emancipation of the last child for whom support is owed under the judgment unless the underlying judgment is renewed, is previously satisfied or the enforcement of the judgment is stayed upon an appeal as provided by law. The transcript or abstract above mentioned shall contain the title of the court and cause and number of action, names of judgment creditors and debtors, time of entry and amount of judgment.

History.

C.S., § 6902B, as added by 1929, ch. 51,
§ 3, p. 70; I.C.A., § 7-1110; am. 1955, ch. 45,

§ 1, p. 63; am. 1963, ch. 209, § 1, p. 598; am.
1995, ch. 264, § 2, p. 846; am. 1998, ch. 68,
§ 1, p. 261; am. 2011, ch. 104, § 2, p. 267.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 104, rewrote the third sentence, which formerly read: "A lien arising from the delinquency of a payment due under a recorded judgment for support of a child after July 1, 1995, continues twenty-three (23) years from the date of judgment unless the judgment be previously satisfied or unless the enforcement of the judgment be stayed upon an appeal as provided by law"; and deleted the former fourth and fifth sentences, which read: "Provided, that no lien for child support shall continue more than five (5) years after the child reaches the age of majority or five (5) years after the child's death, whichever shall first occur. If the recorded judgment is for the support of more than one (1) child, the lien shall continue until five (5) years after the youngest child reaches the age of majority or five (5) years after the death of the last remaining child, whichever shall first occur."

Compiler's Notes.

Section 4 of S.L. 2011, ch. 104 provided:

"Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 5 of S.L. 2011, ch. 104, as amended by S.L. 2011, ch. 331, § 1 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to July 1, 1995, and shall apply to all orders currently being enforced by the Idaho Department of Health and Welfare Child Support Program such that any Idaho judgment for child support that would otherwise have expired since July 1, 1995, may be renewed on or before December 30, 2011."

JUDICIAL DECISIONS

ANALYSIS

Homestead exemption.

Judgment.

Lien by operation of law.

Renewed judgment lien.

When lien does not attach.

Homestead Exemption.

Where creditor recorded a judgment in the county recorder's office in July 2010, a judgment lien in favor of the creditor would attach to all of debtor's after-acquired property in that county until the judgment is satisfied or lapses. When debtor purchased a home in the county in September 2010, creditor's lien affixed to the property immediately. Thus, although debtor filed a homestead declaration two days later, the property was not exempt from execution because of the priority of the judgment lien. In re Bailey, 2011 Bankr. LEXIS 1528 (Bankr. D. Idaho Apr. 26, 2011).

Judgment.

Default judgments, which only partially adjudicate the controversy in a multi-party case, are not "judgments" for purposes of considering the time for renewal under § 10-1111 and this section, because, by their nature, they are not final determinations of the rights and obligations of all parties in the dispute. Bach v. Dawson, 152 Idaho 237, 268 P.3d 1189 (Ct. App. 2012).

Lien by Operation of Law.

Idaho law operated to create a judicial lien

on debtor's property in favor of the creditor upon the domestication and recordation of the final, unappealed California order. In re Hyatt, 2011 Bankr. LEXIS 4849 (Bankr. D. Idaho Dec. 9, 2011).

Renewed Judgment Lien.

When a homebuyer tried to enforce a Utah judgment against a builder's Idaho property, the builder was properly granted summary judgment because, inter alia, one basis for relief for the homebuyer was execution of a judgment lien based on the foreign judgment, but the judgment lien expired five years after the entry of the judgment, and the homebuyer never tried to renew the lien or obtain a new lien. Grazer v. Jones, — Idaho —, 294 P.3d 184 (2013).

Section 10-1111 does not provide that a judgment lien may be renewed within five years after the judgment is recorded. Section 10-1111 incorporates the time period specified in this section, under which a non-child-support judgment lien continues five years from the date of the judgment. Grazer v. Jones, — Idaho —, 294 P.3d 184 (2013).

When Lien Does Not Attach.

Where a debtor and her husband purchased a property as a married couple and resided there as their principal residence, the property was automatically protected by a homestead exemption under § 55-1004, and a creditor's judgment, which was recorded thereafter, did not attach as a judgment lien pursuant to this section. However, when the debtor quitclaimed her interest to her husband and then he later quitclaimed her interest back, the judgment lien attached to her

new interest at the same that she reacquired that interest. Because those acts occurred simultaneously, the debtor did not have an ownership interest, or a homestead exemption, prior to the lien affixing, and the property was subject to the judgment lien under § 55-1005. In re Hassler, 2011 Bankr. LEXIS 1880 (Bankr. D. Idaho May 17, 2011).

Cited in: In re Marcovitz, 2011 Bankr. LEXIS 4132 (Bankr. D. Idaho Oct. 25, 2011).

10-1111. Renewal of judgment — Lien. — (1) Unless the judgment has been satisfied, at any time prior to the expiration of the lien created by section 10-1110, Idaho Code, or any renewal thereof, the court which entered the judgment, other than a judgment for child support, may, upon motion, renew such judgment. The renewed judgment may be recorded in the same manner as the original judgment, and the lien established thereby shall continue for five (5) years from the date of judgment.

(2) Unless the judgment has been satisfied, and prior to the expiration of the lien created in section 10-1110, Idaho Code, or any renewal thereof, a court that has entered a judgment for child support may, upon motion, renew such judgment. The renewed judgment may be enforced in the same manner as the original judgment, and the lien established thereby shall continue for ten (10) years from the date of the renewed judgment.

History.

I.C., § 10-1111, as added by 1978, ch. 115,

§ 1, p. 266; am. 1995, ch. 264, § 3, p. 846; am. 2011, ch. 104, § 3, p. 267.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 104, added the subsection (1) designation and added subsection (2).

Compiler's Notes.

Section 4 of S.L. 2011, ch. 104 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 5 of S.L. 2011, ch. 104, as amended by S.L. 2011, ch. 331, § 1 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to July 1, 1995, and shall apply to all orders currently being enforced by the Idaho Department of Health and Welfare Child Support Program such that any Idaho judgment for child support that would otherwise have expired since July 1, 1995, may be renewed on or before December 30, 2011."

JUDICIAL DECISIONS**Judgment.**

Default judgments, which only partially adjudicate the controversy in a multi-party case, are not "judgments" for purposes of considering the time for renewal under § 10-1110 and this section, because, by their nature, they are not final determinations of the rights and obligations of all parties in the

dispute. *Bach v. Dawson*, 152 Idaho 237, 268 P.3d 1189 (Ct. App. 2012).

When a homebuyer tried to enforce a Utah judgment against a builder's Idaho property, the builder was properly granted summary judgment because, *inter alia*, one basis for relief for the homebuyer was execution of a judgment lien based on the foreign judgment,

but the judgment lien expired five years after the entry of the judgment, and the homebuyer never tried to renew the lien or obtain a new

lien. *Grazer v. Jones*, — Idaho —, 294 P.3d 184 (2013).

CHAPTER 12

DECLARATORY JUDGMENTS

10-1201. Declaratory judgments authorized — Form and effect.

JUDICIAL DECISIONS

ANALYSIS

Justiciable controversy.
Standing.

Justiciable Controversy.

Courts will not rule on declaratory judgment actions which present questions that are moot or abstract. An action for declaratory judgment is moot where the judgment, if granted, would have no effect either directly or collaterally on the plaintiff: the plaintiff would be unable to obtain further relief based on the judgment, and no other relief is sought in the action *Wylie v. State*, 151 Idaho 26, 253 P.3d 700 (2011).

Property owner's declaratory complaint challenging a denial of access for a subdivision directly onto a state highway failed to present a justiciable issue under § 10-1202 and this section, because a prior development agreement describing the subdivision's access points unambiguously provided that there

would be no direct access to the highway and the property owner acquired his interest from a voluntary party to that agreement. *Wylie v. State*, 151 Idaho 26, 253 P.3d 700 (2011).

Standing.

Objecting landowners had standing under § 10-1202 and this section to challenge a rezoning decision that allowed expansion of mining operations to adjacent property, because the objectors alleged specific harms resulting from the rezoning, rather than from the existing mining activities. *Ciszek v. Kootenai County Bd. of Comm'rs*, 151 Idaho 123, 254 P.3d 24 (2011).

Cited in: *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, — Idaho —, 281 P.3d 1076 (2012).

10-1202. Person interested or affected may have declaration.

JUDICIAL DECISIONS

ANALYSIS

Exhaustion of remedies.
Interested party.
Justiciable controversy.
Plat.
Zoning.

Exhaustion of Remedies.

In a breach of contract action relating to cottage site leases from the state, a trial court erred by finding that several lessees were unable to bring a declaratory judgment action due to a failure to exhaust administrative remedies. The case presented was one of contract interpretation, rather than a challenge to administrative action. *Wasden v. State Bd. of Land Comm'n*, — Idaho —, 280 P.3d 693 (2012).

Interested Party.

A developer lacked standing to bring an action for declaratory judgment where the developer failed to demonstrate that it suffered from a distinct palpable injury. *Martin & Martin Custom Homes, LLC v. Camas County*, 150 Idaho 508, 248 P.3d 1243 (2011).

Objecting landowners had standing under § 10-1201 and this section to challenge a rezoning decision that allowed expansion of mining operations to adjacent property, be-

cause the objectors alleged specific harms resulting from the rezoning, rather than from the existing mining activities. *Ciszek v. Kootenai County Bd. of Comm’rs*, 151 Idaho 123, 254 P.3d 24 (2011).

Justiciable Controversy.

Property owner’s declaratory complaint challenging a denial of access for a subdivision directly onto a state highway failed to present a justiciable issue under § 10-1201 and this section, because a prior development agreement describing the subdivision’s access points unambiguously provided that there would be no direct access to the highway and the property owner acquired his interest from a voluntary party to that agreement. *Wylie v. State*, 151 Idaho 26, 253 P.3d 700 (2011).

Property owner was not entitled to declaratory relief to define the process an irrigation district had to use when considering petitions for exclusion because the property owner failed to demonstrate the existence of an actual or justiciable controversy. *Bettwieser v. New York Irrigation Dist.*, — Idaho —, 297 P.3d 1134 (2013).

10-1210. Costs.

JUDICIAL DECISIONS

Costs Denied.

Where appellant insured’s claims for breach of an insurance contract and declaratory relief were dismissed, the insured was not the prevailing party and, thus, was not entitled to recover attorney fees under Idaho App. R. 40 or costs under this section. *Villa*

Plat.

In an action for declaratory judgment to determine whether a road was public or private, the district court correctly declared that the road was public, because the plat unambiguously dedicated the disputed road to the public. *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 268 P.3d 1159 (2012).

Zoning.

Property owner acted reasonably on appeal in a zoning case, conceding arguments where a decision unfavorable to him was *res judicata* and by not making frivolous arguments. Thus, although the owner lacked standing under this section because the zoning of his land had not been changed, the county was not entitled to attorney fees on appeal. *Martin v. Smith*, — Idaho —, 296 P.3d 367 (2013).

Cited in: *Chavez v. Canyon County*, 152 Idaho 297, 271 P.3d 695 (2012); *Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.)*, 488 B.R. 130 (Bankr. D. Idaho 2012).

CHAPTER 13

FOREIGN JUDGMENTS

10-1301. “Foreign judgment” defined.

JUDICIAL DECISIONS

ANALYSIS

Election of remedies.
Time limitations.

Election of Remedies.

There is no basis for preventing a foreign judgment creditor from pursuing parallel methods of satisfying his or her entire judgment. A judgment filed under the Idaho Enforcement of Foreign Judgments Act (EFJA) creates a lien on only real property, but, if a judgment debtor has insufficient real property to pay the entire judgment, it may be necessary to reach the debtor’s other prop-

erty; accordingly, a judgment creditor is not forced to elect between filing a foreign judgment under the EFJA and pursuing an action based on the foreign judgment. *Grazer v. Jones*, — Idaho —, 294 P.3d 184 (2013).

Time Limitations.

Six-year statute of limitations in § 5-215 does not affect the time in which a foreign judgment may be filed pursuant to the Idaho

Enforcement of Foreign Judgments Act (EFJA). Section 5-215 applies only to an action upon a judgment requiring a judgment creditor to file a completely new case, but an EFJA filing does not involve initiating a new case; rather, under the EFJA, the foreign judgment is treated in the same manner as an Idaho judgment. *Grazer v. Jones*, — Idaho —, 294 P.3d 184 (2013).

10-1302. Filing of foreign judgment with clerk of district court — Effect of filing.

JUDICIAL DECISIONS

Time Limitations. Six-year statute of limitations in. § 5-215 does not affect the time in which a foreign judgment may be filed pursuant to the Idaho Enforcement of Foreign Judgments Act (EFJA). Under the EFJA, the foreign judgment is merely treated in the same manner as an Idaho judgment by the clerk of the court in which the judgment is filed, and may be enforced or satisfied in like manner as an Idaho judgment, under § 10-1302. *Grazer v. Jones*, — Idaho —, 294 P.3d 184 (2013).

CHAPTER 14

UNIFORM FOREIGN COUNTRY MONEY JUDGMENTS RECOGNITION ACT

10-1404. Standards for recognition of foreign country judgment.

JUDICIAL DECISIONS

Cited in: *Markin v. Grohmann*, — Idaho —, 280 P.3d 726 (2012).

TITLE 11

ENFORCEMENT OF JUDGMENTS IN CIVIL ACTIONS

CHAPTER.

2. PROPERTY SUBJECT TO EXECUTION — EXEMPTIONS, § 11-204.

CHAPTER 2

PROPERTY SUBJECT TO EXECUTION — EXEMPTIONS

SECTION.

11-204. Exemption in favor of married person.

11-204. Exemption in favor of married person. — All real and personal property of any married person at the time of his or her marriage, or which he or she subsequently acquires as separate property, and all noncommunity rents, issues and profits thereof, are exempt from execution for any separate debts incurred by his or her spouse.

History.

I.C., § 11-204, as added by 2011, ch. 86, § 2, p. 182.

STATUTORY NOTES

Prior Laws.

Former § 11-204, Exemption in favor of married woman, which comprised C.C.P. 1881, § 439; R.S., R.C., & C.L., § 4479; C.S., § 6919; I.C.A., § 8-203, was repealed by S.L. 2011, ch. 86, § 1.

Effective Dates.

Section 3 of S.L. 2011, ch. 86 declared an emergency. Approved March 16, 2011.

JUDICIAL DECISIONS

Constitutionality.

Former section is unconstitutional, as it treated husbands and wives unequally. Under this section, the earnings of a wife were exempt from execution against her husband, but the earnings of a husband were not exempt from execution against his wife. Addi-

tionally, the unequal treatment under this section was arbitrary and did not demonstrate a substantial relation to the objective of community property legislation. Credit Bureau of E. Idaho, Inc. v. Lecheminant, 149 Idaho 468, 235 P.3d 1188 (2010) (see 2011 repeal and enactment).

CHAPTER 3

LEVY AND SALE UNDER EXECUTION

11-309. Certificate of sale — Title conveyed.

JUDICIAL DECISIONS

Passage of Title.

Title to real property passes to a foreclosure sale purchaser, under §§ 6-107 and 11-310 and this section, when the purchaser receives

the certificate of sale. *Indian Springs L.L.C. v. Andersen*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 192 (Sept. 14, 2012).

11-310. Title to real property — Right of redemption — Certificate of sale.

JUDICIAL DECISIONS

Title Acquired by Purchaser.

Title to real property passes to a foreclosure sale purchaser, under §§ 6-107 and 11-309 and this section, when the purchaser receives

the certificate of sale. *Indian Springs L.L.C. v. Andersen*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 192 (Sept. 14, 2012).

CHAPTER 6

EXEMPTION OF PROPERTY FROM ATTACHMENT OR LEVY

11-603. Property exempt without limitation.

JUDICIAL DECISIONS

Social Security Benefits.

Chapter 7 trustee did not meet his burden under Fed. R. Bankr. P. 4003 of proving that a debtor acted in bad faith when she failed to timely amend her schedules to show that she received an award of Social Security Disability Insurance ("SSDI") benefits shortly after she declared bankruptcy, such that her claim that the award was exempt from creditors' claims under subsection (3) should be denied. Although the benefits were part of the debt-

or's bankruptcy estate pursuant to 11 U.S.C.S. § 541 and the debtor was required under 11 U.S.C.S. § 522 to list them in her schedules, the debtor thought that she did not have to list the award to claim the exemption because her attorney had told her that SSDI benefits were exempt, and she amended her schedules shortly after she learned that she misunderstood her obligations. In re *Varney*, 449 B.R. 411 (Bankr. D. Idaho 2011).

11-604. Property exempt to extent reasonably necessary for support.

JUDICIAL DECISIONS

ANALYSIS

Alimony.

Annuity.

Right to payment of money.

Alimony.

Trustee failed to meet his burden under

Fed. R. Bankr. P. 4003(c) of proving that a Chapter 7 debtor improperly claimed an ali-

mony exemption under subsection (1) of this section where (1) the payments were received under an agreement that labeled the payments alimony; (2) the significant disparity between the parties' relative incomes indicated that the debtor required support; and (3) the entire sum was reasonably necessary for the debtor's support when she filed her petition, and the entire sum would be reasonably necessary in the future, as the debtor would be a full-time college student for several years and would have student loans to repay when she graduated. In re Grimmett, 2010 Bankr. LEXIS 968 (Bankr. D. Idaho 2010).

Annuity.

Because debtors did not show that the wife was a dependent of her former spouse, they could not exempt annuity payments under paragraph (1)(c). However, the annuity payments were exempt under § 41-1836, but debtors were held to the statutory cap of \$1,250 per month because their income was likely to exceed their expenses. In re Baldwin, 2012 Bankr. LEXIS 5376 (Bankr. D. Idaho Nov. 13, 2012).

Because debtors did not show that the wife was a dependent of her former spouse, they

could not exempt annuity payments under paragraph (1)(c). However, the annuity payments were exempt under § 41-1836, but debtors were held to the statutory cap of \$1,250 per month because their income was likely to exceed their expenses. In re Baldwin, 2012 Bankr. LEXIS 5376 (Bankr. D. Idaho Nov. 13, 2012).

Right to Payment of Money.

Proceeds from the sale of a debtor's marital homestead were not exempt under subsection (1)(b) of this section as funds necessary to make support payments to his ex-spouse because: (1) the statute provides an exemption of support monies to the extent necessary for the support of a debtor and his dependents, and, thus, it does not allow an exemption for funds paid out by a debtor to benefit another; (2) the statute only exempts money received for support, and here, the funds were received as sale proceeds; and (3) while it was true that the debtor's ex-spouse had a priority claim under 11 U.S.C.S. §§ 507(a)(1) and 726, allowing the debtor to use the sale proceeds to pay support payment would essentially allow him to use an asset of his bankruptcy estate to prefer a particular creditor at the expense of other creditors. In re Marriott, 427 B.R. 887 (Bankr. D. Idaho 2010).

11-604A. Pension money exempt.

JUDICIAL DECISIONS

ANALYSIS

Bankruptcy.

Bankruptcy planning.

Claim of partial exemption.

Bankruptcy.

Income that is arguably exempt under this section may nonetheless be considered when assessing a debtor's ability to fund a chapter 13 plan. In re Soto, 2012 Bankr. LEXIS 2632 (Bankr. D. Idaho June 8, 2012).

Bankruptcy Planning.

Bankruptcy court denied a bankruptcy trustee's objections to Chapter 7 debtors' actions two weeks before declaring bankruptcy, where debtors withdrew \$12,000 cash value from a life insurance policy, claimed exemption for the \$4,872 remaining in the policy under § 11-605(10), and purchased two \$6,000 IRAs and claimed exemption for them

under this section. The debtors were allowed to maximize their exemptions before they declared bankruptcy and did not commit fraud on their creditors. In re Thomas, 477 B.R. 778 (Bankr. D. Idaho 2012).

Claim of Partial Exemption.

The manner in which the debtors' exemption was asserted suggested that part of the value in a 401(k) was not claimed exempt and, thus, remained part of the bankruptcy estate. That value had to be considered in evaluating whether the plan met the requirement that unsecured creditors in a chapter 13 receive as much as they would should debtors liquidate under chapter 7. In re Hobart, 452 B.R. 789 (Bankr. D. Idaho May 20, 2011).

11-605. Exemptions of personal property and disposable earnings subject to value limitations.

JUDICIAL DECISIONS

ANALYSIS

Heirlooms.
Insurance policies.
Mobile home.
Motor vehicles.
Tools of trade.

Heirlooms.

Court sustained a Chapter 7 trustee's objection to debtors' claim that a boat was exempt as an heirloom under paragraph (1)(c), where their deceased son purchased the boat from his aunt and they acquired the boat from his probate estate and intended to hold it until his son reached the age of majority, as this was not a multi-generational transfer. In re Merrill, 2012 Bankr. LEXIS 4451 (Bankr. D. Idaho Sept. 24, 2012).

Insurance Policies.

Exemptions under subsection (10) may only be taken by those who own an unmatured life insurance policy, and, even then, only if the person claiming the exemption is the insured or a dependent of the insured. Although parents own insurance policies on various minor children, they may not claim an exemption in those policies, and wife cannot claim an exemption on a policy owned by her husband. In re Steiner, 459 B.R. 748 (Bankr. D. Idaho 2010).

Wife who declared Chapter 7 bankruptcy properly claimed the exemption allowed by subsection (10) of this section in the cash surrender value of a policy that insured her life, even though her husband owned the policy, because she had an ownership interest in the policy under Idaho's community property law. The husband purchased the policy on his wife's life after their marriage, and they paid all premiums due on the policy using community property funds. In re Thompson, 2011 Bankr. LEXIS 2654 (Bankr. D. Idaho 2011).

Bankruptcy court denied a bankruptcy trustee's objections to Chapter 7 debtors' actions two weeks before declaring bankruptcy, where debtors withdrew \$12,000 cash value from a life insurance policy, claimed exemption for the \$4,872 remaining in the policy under subsection (10), and purchased two \$6,000 IRAs and claimed exemption for them under § 11-604A. The debtors were allowed to maximize their exemptions before they declared bankruptcy and did not commit fraud on their creditors. In re Thomas, 477 B.R. 778 (Bankr. D. Idaho 2012).

Trustee acted properly when he filed an objection to the debtor's claim that the cash value of five insurance policies that the debtor owned was exempt from creditors' claims under subsection (10) and obtained an order which allowed him to liquidate all five policies and pay the debtor \$5,000 out of \$75,033 in proceeds that he received from the insurance company. Although the debtor could have claimed that the policies were exempt under subsection (9), he failed to do so. The trustee was not obliged to divine that the debtor intended to rely on subsection (9), when he claimed exemptions under subsection (10). In re Wisdom, 478 B.R. 394 (Bankr. D. Idaho 2012).

Subsections (9) and (10) were intended by the legislature to protect two different types of interests in unmatured life insurance contracts: subsection (9) exempts the life insurance policy, while subsection (10) exempts the life insurance policy's cash value. In re Wisdom, 478 B.R. 394 (Bankr. D. Idaho 2012).

Mobile Home.

Where the debtor sought to claim an exemption in a mobile home that she owned with her mother, pursuant to subsection (10) of this section and 11 U.S.C.S. § 522(b)(3)(B), she failed to show that her interest in the mobile home was exempt from process under § 11-609. In re Antonie, 432 B.R. 843 (Bankr. D. Idaho 2010), *aff'd*, 2011 U.S. Dist. LEXIS 35178 (D. Idaho 2011).

Motor Vehicles.

Bankruptcy court sustained a Chapter 7 trustee's objection to a debtor's claim that an all-terrain vehicle (ATV) that the trustee recovered from a person who bought the ATV from the debtor was the debtor's property, and that \$800 of the ATV's value was exempt from creditors' claims. In re Ady, 2010 Bankr. LEXIS 3077 (Bankr. D. Idaho 2010).

An all-terrain vehicle does not qualify for Chapter 7 exemption. The restricted license plate did not allow it to be driven on most Idaho roads, nor were any safety mechanisms required to obtain such a license; it remained non-exempt even after the amendments to the license and registration requirements for

ATVs under § 67-7122. In re Bosworth, 449 B.R. 104 (Bankr. D. Idaho 2011).

Tools of Trade.

Chapter 7 debtors, a physician and an accountant, were not entitled to an exemption under subsection (3) of this section for farm equipment as tools or implements because farming could not be considered the debtors' occupation and it did not generate income necessary for the debtors' continued financial support. In re McHugh, 2010 Bankr. LEXIS 2105 (Bankr. D. Idaho 2010).

Where debtor had formerly worked as a

carpenter, but was currently working laying concrete, a tool trailer and a compressor, and other tools formerly used in his carpentry work, were not necessary for the debtor's continued financial support and, therefore, were not exempt under subsection (3). The debtor's concrete work provided an adequate income to meet his family's basic needs at the present time. In re Blackburn, 2011 Bankr. LEXIS 178 (Bankr. D. Idaho Jan. 19, 2011).

Cited in: In re Aeschbacher, 2011 Bankr. LEXIS 664 (Bankr. D. Idaho 2011).

RESEARCH REFERENCES

A.L.R. — Jewelry and clothing as within debtor's exemptions under state statutes. 44 A.L.R.6th 481.

Construction and application of exemption for firearms under state law. 46 A.L.R.6th 401.

11-609. Nonauthorization of federal bankruptcy exemptions.

JUDICIAL DECISIONS

ANALYSIS

Exemptions allowed.

Limitations on exemptions.

Exemptions Allowed.

Under this section, Idaho debtors may access exemptions allowed under Idaho law, as well as those listed in 11 U.S.C.S. § 522(b)(3). In re Thomason, — Bankr. —, 2013 Bankr. LEXIS 886 (Bankr. D. Idaho Feb. 19, 2013).

Limitations on Exemptions.

Because Idaho opted out of the federal bankruptcy exemptions, a Chapter 7 debtor may utilize only the exemptions provided under state law pursuant to 11 U.S.C.S. § 522(b)(3) and this section; although Idaho's exemption statutes are to be liberally construed in the debtor's favor, they may not be "tortured" in the guise of liberal construction. In re Grimmett, 2010 Bankr. LEXIS 968 (Bankr. D. Idaho 2010).

Where the debtor sought to claim an exemption in a mobile home that she owned with her mother, pursuant to subsection (10) of § 11-605 and 11 U.S.C.S. § 522(b)(3)(B), she failed to show that her interest in the mobile home was exempt from process under

this section. In re Antonie, 432 B.R. 843 (Bankr. D. Idaho 2010), *aff'd*, 2011 U.S. Dist. LEXIS 35178 (D. Idaho 2011).

Under 11 U.S.C.S. § 522(b)(3)(A), Chapter 7 debtors who resided in Idaho were required to apply the Idaho homestead exemption, §§ 55-1001, 55-1003, and 55-1004; the debtors could not apply the Idaho homestead exemption to a home located in Washington state and could not apply Washington state homestead law to their case in Idaho. In re Harris, 2010 Bankr. LEXIS 2020 (Bankr. D. Idaho June 23, 2010).

Because Idaho has opted out of the Bankruptcy Code's exemption scheme, debtors in Idaho may claim only those exemptions allowable under Idaho law, as well as those listed in 11 U.S.C.S. § 522(b)(3). In re Forshee, 2010 Bankr. LEXIS 3044 (Bankr. D. Idaho Sept. 16, 2010).

Cited in: In re Thomas, 477 B.R. 778 (Bankr. D. Idaho 2012); In re Merrill, 2012 Bankr. LEXIS 4451 (Bankr. D. Idaho Sept. 24, 2012).

TITLE 12

COSTS AND MISCELLANEOUS MATTERS IN CIVIL ACTIONS

CHAPTER.

1. COSTS, §§ 12-117, 12-120.

CHAPTER 1

COSTS

SECTION.

12-117. Attorney's fees, witness fees and expenses awarded in certain instances.

SECTION.

12-120. Attorney's fees in civil actions.

12-117. Attorney's fees, witness fees and expenses awarded in certain instances. — (1) Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

(2) If a party to a proceeding prevails on a portion of the case, and the state agency or political subdivision or the court hearing the proceeding, including on appeal, finds that the nonprevailing party acted without a reasonable basis in fact or law with respect to that portion of the case, it shall award the partially prevailing party reasonable attorney's fees, witness fees and other reasonable expenses with respect to that portion of the case on which it prevailed.

(3) Expenses awarded against a state agency or political subdivision pursuant to this section shall be paid from funds in the regular operating budget of the state agency or political subdivision. If sufficient funds are not available in the budget of the state agency, the expenses shall be considered a claim governed by the provisions of section 67-2018, Idaho Code. If sufficient funds are not available in the budget of the political subdivision, the expenses shall be considered a claim pursuant to chapter 9, title 6, Idaho Code. Every state agency or political subdivision against which litigation expenses have been awarded under this act shall, at the time of submission of its proposed budget, submit a report to the governmental body which appropriates its funds in which the amount of expenses awarded and paid under this act during the fiscal year is stated.

(4) In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses. For purposes of this subsection, "governmental entity" means any state agency or political subdivision.

(5) For purposes of this section:

(a) “Person” means any individual, partnership, limited liability partnership, corporation, limited liability company, association or any other private organization;

(b) “Political subdivision” means a city, a county, any taxing district or a health district;

(c) “Proceeding” means any administrative proceeding, administrative judicial proceeding, civil judicial proceeding or petition for judicial review or any appeal from any administrative proceeding, administrative judicial proceeding, civil judicial proceeding or petition for judicial review.

(d) “State agency” means any agency as defined in section 67-5201, Idaho Code.

(6) If the amount pleaded in an action by a person is twenty-five thousand dollars (\$25,000) or less, the person must satisfy the requirements of section 12-120, Idaho Code, as well as the requirements of this section before he or she may recover attorney’s fees, witness fees or expenses pursuant to this section.

History.

I.C., § 12-117, as added by 1984, ch. 204, § 1, p. 501; am. 1993, ch. 216, § 1, p. 587; am.

1994, ch. 36, § 1, p. 55; am. 2000, ch. 241, § 1, p. 675; am. 2010, ch. 29, § 1, p. 49; am. 2012, ch. 149, § 1, p. 419.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 149, deleted “administrative proceeding or civil judicial” or similar language preceding “proceeding” near the beginning of subsections (2) and (3); substituted “hearing the proceeding, including on appeal” for “as the case may be” in subsections (2) and (3); added subsection (4), renumbering the subsequent subsections accordingly; in subsection (5), inserted “limited liability partnership” and “limited liability company” in

paragraph (a), added “or a health district” in paragraph (b), added paragraph (c), and redesignated former paragraph (c) as paragraph (d); and substituted “twenty-five thousand dollars (\$25,000)” for “two thousand five hundred dollars (\$2,500)” in subsection (6).

Effective Dates.

Section 2 of S.L. 2012, ch. 149 declared an emergency. Approved March 27, 2012.

JUDICIAL DECISIONS

ANALYSIS

2010 amendment.

Administrative appeal.

Agency action.

Applicability.

Attorney’s fees.

Fees awarded.

Fees not allowed.

Pro se.

Standard of review.

2010 Amendment.

Under the 2010 amendment of this section, courts may not award fees in a review of administrative decisions, but agencies may now award fees during administrative proceedings. *Sopatyk v. Lemhi County*, 151 Idaho

809, 264 P.3d 916 (2011) (see 2012 amendment).

Administrative Appeal.

Subsection (1) does not allow a court to award attorney’s fees on judicial review of an

administrative decision. *St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs*, 150 Idaho 484, 248 P.3d 735 (2011).

Agency Action.

A petition for judicial review of an agency action is neither an administrative proceeding nor a civil judicial proceeding, so subsection (1) of this section does not enable the courts to award attorney fees to either party. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010) (see 2010 and 2012 amendments).

Applicability.

School districts are "taxing districts" for purpose of this section. *Potlatch Educ. Ass'n & Doug Richards v. Potlatch Sch. Dist.*, 148 Idaho 630, 226 P.3d 1277 (2010).

Attorney's Fees.

Landowner's action against the county was not a civil judicial proceeding, *Idaho R. Civ. P. 3(a)(1)*. Since it was a petition for judicial review of a county commission decision, a proceeding that did not commence with a complaint filed in court, the courts could not award fees. *Smith v. Wash. County*, 150 Idaho 388, 247 P.3d 615 (2010) (see 2010 and 2012 amendments).

Fees Awarded.

Highway district was entitled to attorney fees because it was a taxing district pursuant to §§ 40-1308, 63-3101, and property owners' tort, takings, and due process claims arising from highway maintenance lacked a reasonable basis. *Halvorson v. N. Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Fees Not Allowed.

A petition for judicial review of an agency action is neither an administrative proceeding nor a civil judicial proceeding; thus, this section does not enable the courts to award attorney fees in such cases. *Johnson v. State* (In re Johnson), — Idaho —, 280 P.3d 749 (Ct. App. 2012).

Property owner acted reasonably on appeal in a zoning case, conceding arguments where a decision unfavorable to him was *res judicata* and by not making frivolous arguments. Thus, although the owner lacked standing under § 10-1202 because the zoning of his land had not been changed, the county was not entitled to attorney fees on appeal. *Martin v. Smith*, — Idaho —, 296 P.3d 367 (2013).

Where an irrigation district claimed attorney fees under § 12-121, which was inapplicable, rather than under this section, which applied to it as a government taxing entity, the district was not awarded fees under either section; however, the district was entitled to fees under I.A.R. 11.2, which allows for attorney fees when an appeal is brought for an improper purpose. *Bettwieser v. New York Irrigation Dist.*, — Idaho —, 297 P.3d 1134 (2013).

Pro Se.

An attorney acting as a pro se litigant is not entitled to an award of attorney fees on appeal. *Chavez v. Canyon County*, 152 Idaho 297, 271 P.3d 695 (2012).

Standard of Review.

An appellate court should review a district court's award of attorney's fees for abuse of discretion. That approach is preferable to a *de novo* review because: (1) the legislature specifically provided that the court shall award attorney fees under this section "if it finds" the nonprevailing party acted without reasonable basis in fact or law, indicating the determinative finding was to be made by the trial court; and (2) this section speaks in terms of the "reasonableness" of the losing party's actions, which implies a measure of objectivity, and which is properly left to the district court's reasoned judgment. *Halvorson v. N. Latah County Highway Dist.*, 151 Idaho 196, 254 P.3d 497 (2011); *City of Osborn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

Cited in: *Zingiber Inv., LLC v. Hagerman Highway Dist.*, 150 Idaho 675, 249 P.3d 868 (2011); *Friends of Minidoka v. Jerome County* (In re Jerome County Bd. of Comm'rs), — Idaho —, 281 P.3d 1076 (2012).

12-120. Attorney's fees in civil actions. — (1) Except as provided in subsections (3) and (4) of this section, in any action where the amount pleaded is thirty-five thousand dollars (\$35,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the

commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

(2) The provisions of subsection (1) of this section shall also apply to any counterclaims, cross-claims or third party claims which may be filed after the initiation of the original action. Except that a ten (10) day written demand letter shall not be required in the case of a counterclaim.

(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(4) In actions for personal injury, where the amount of plaintiff's claim for damages does not exceed twenty-five thousand dollars (\$25,000), there shall be taxed and allowed to the claimant, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees for the prosecution of the action, written demand for payment of the claim and a statement of claim must have been served on the defendant's insurer, if known, or if there is no known insurer, then on the defendant, not less than sixty (60) days before the commencement of the action; provided that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety percent (90%) of the amount awarded to the plaintiff.

The term "statement of claim" shall mean a written statement signed by the plaintiff's attorney, or if no attorney, by the plaintiff which includes:

(a) An itemized statement of each and every item of damage claimed by the plaintiff including the amount claimed for general damages and the following items of special damages: (i) medical bills incurred up to the date of the plaintiff's demand; (ii) a good faith estimate of future medical bills; (iii) lost income incurred up to the date of the plaintiff's demand; (iv) a good faith estimate of future loss of income; and (v) property damage for which the plaintiff has not been paid.

(b) Legible copies of all medical records, bills and other documentation pertinent to the plaintiff's alleged damages.

If the plaintiff includes in the complaint filed to commence the action, or in evidence offered at trial, a different alleged injury or a significant new item of damage not set forth in the statement of claim, the plaintiff shall be deemed to have waived any entitlement to attorney's fees under this section.

(5) In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

(6) In any small claims case resulting in entry of a money judgment or judgment for recovery of specific property, the party in whose favor the judgment is entered shall be entitled to reasonable postjudgment attorney’s fees and costs incurred in attempting to collect on the judgment. Such attorney’s fees and costs shall be set by the court following the filing of a memorandum of attorney’s fees and costs with notice to all parties and an opportunity for hearing. The amount of such attorney’s fees shall be determined by the court after consideration of the factors set out in rule 54(e)(3) of the Idaho rules of civil procedure, or any future rule that the supreme court of the state of Idaho may promulgate, but the court shall not base its determination of such fees upon any contingent fees arrangement between attorney and client, or any arrangement setting such fees as a percentage of the judgment or the amount recovered. In no event shall postjudgment attorney’s fees exceed the principal amount of the judgment or value of property recovered.

History.

1970, ch. 44, § 1, p. 91; am. 1975, ch. 65, § 1, p. 131; am. 1986, ch. 205, § 1, p. 511; am. 1987, ch. 204, § 1, p. 430; am. 1988, ch. 343,

§ 1, p. 1020; am. 1994, ch. 353, § 1, p. 1113; am. 1996, ch. 383, § 1, p. 1305; am. 2001, ch. 161, § 1, p. 569; am. 2012, ch. 94, § 1, p. 257.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 94, substituted “thirty-five thousand dollars (\$35,000)

or less” for “twenty-five thousand dollars (\$25,000) or less” near the beginning of subsection (1).

JUDICIAL DECISIONS

ANALYSIS

- Amount of award.
- Civil action.
- Commercial transaction.
- Ejectment action.
- Illegal transaction.
- Judgment.
- New item of damage.
- Pleading.
- Post-judgment award.
- Prevailing party.
- Reasonableness.

Amount of Award.

Court improperly awarded more in attorney fees than the party incurred in defending a contract suit. BECO Constr. Co. v. J-U-B Eng’rs, Inc., 149 Idaho 294, 233 P.3d 1216 (2010).

Civil Action.

After the court dismissed debtors’ complaint against a lender, which asserted violations of federal and state consumer protection and lending laws, the lender was not entitled to attorneys’ fees under subsection (3), because, while the debtors’ action was a civil action, it was not the type of civil action, i.e.,

a civil action to recover on a note or negotiable instrument, for which subsection (3) authorizes the recovery of attorneys’ fees. Beach v. Wells Fargo Bank, NA (In re Beach), 2011 Bankr. LEXIS 4027 (Bankr. D. Idaho Oct. 19, 2011).

Commercial Transaction.

Although § 19-2518 authorizes a collector to pursue a money judgment, for a delinquent fine, against a defendant/debtor as though it were in a civil action, the basis for that action is a criminal judgment that resulted from a criminal proceeding, not a commercial transaction; thus, subsection (3) of this section is

inapplicable. *Collection Bureau, Inc. v. Dorsey*, 150 Idaho 695, 249 P.3d 1150 (2011).

In an adversary proceeding in a bankruptcy case, a creditor was not entitled to recover attorneys' fees from another creditor under subsection (3). The parties had no relationship before the adversary proceeding; the fact that the debtors did business with both parties was insufficient to establish the existence of the type of commercial transaction warranting attorneys' fees under the statute. *J.D. Heiskell Holdings, L.L.C. v. Gerratt* (In re Gerratt), 2011 Bankr. LEXIS 1690 (Bankr. D. Idaho May 9, 2011).

Bailment, whether express or implied, constitutes a commercial transaction which serves as the basis upon which a party may recover attorneys' fees. *Bridge Tower Dental, P.A. v. Meridian Computer Ctr., Inc.*, 152 Idaho 569, 272 P.3d 541 (2012).

Hiring an attorney to negotiate the end of a marriage is a personal transaction, not a commercial transaction. *McCormick Int'l USA, Inc. v. Shore*, 152 Idaho 920, 277 P.3d 367 (2012).

The prevailing party is entitled to an award of attorney fees under subsection (3) where the action is one to recover in a commercial transaction, regardless of proof that the commercial transaction alleged did, in fact, occur. *O'Shea v. High Mark Dev., LLC*, — Idaho —, 280 P.3d 146 (2012).

Following the reversal of a decision enforcing a German money judgment against the defendant, based on a promissory note, the defendant was not entitled to an award of attorney fees, as the proceeding was one seeking to grant recognition of the German judgment and was not an action based on a commercial transaction. *Markin v. Grohmann*, — Idaho —, 280 P.3d 726 (2012).

District court properly denied a printing business costs and attorney's fees pursuant to subsection (3), where testimony showed that there were no contracts between the business and the utility company that supplied septic services to the industrial park where the business leased space, and the third party beneficiary agreement upon which the business's claims were based was not a commercial transaction between the parties. *Printcraft Press, Inc. v. Sunnyside Park Utils., Inc.*, — Idaho —, 283 P.3d 757 (2012).

Ejectment Action.

A buyer of property at a foreclosure sale was not entitled to attorney fees under subsection (3) of this section, because the ejectment action was not an action to recover on a commercial transaction. *Black Diamond Alliance, LLC v. Kimball*, 148 Idaho 798, 229 P.3d 1160 (2010).

Illegal Transaction.

In a dispute regarding a stock redemption agreement, attorney fees under subsection (3)

were not available, because the transaction was illegal. *Taylor v. AIA Servs. Corp.*, 151 Idaho 552, 261 P.3d 829 (2011).

When the transaction at issue in a lawsuit is an illegal commercial transaction, no party to the transaction is entitled to fees under this section. Thus, a contractor could not claim the benefit of this section for fees for trial or on appeal where the contractor, a subcontractor, and a third party structured their agreements to circumvent the license requirements in § 54-1902. *Harris, Inc. v. Foxhollow Constr. & Trucking*, 151 Idaho 761, 264 P.3d 400 (2011).

Judgment.

Although materialmen who obtained a default judgment did not cite in the judgment the statutory authority under which attorney fees were granted, they were not thereby precluded from recovering fees because they specifically pled that their lien foreclosure action arose from a commercial transaction and it was evident that the parties had engaged in a commercial transaction. *Magleby v. Garn*, — Idaho —, 296 P.3d 400 (2013).

New Item of Damage.

Plaintiffs' increased request for damages at trial did not constitute "a significant new item of damage" that precluded them from obtaining fees under subsection (4). Plaintiffs simply sought to recover greater amounts of damages for the items of damage listed in their respective statements of claim. *Bennett v. Patrick*, 152 Idaho 854, 276 P.3d 726 (2012).

Pleading.

Parties need not identify in the judgment the specific subsection of this section under which attorney fees are sought when the applicable provision has been clearly identified. The appropriate inquiry is whether attorney fees were recoverable under one of the subsections at the time of the entry of judgment. *Magleby v. Garn*, — Idaho —, 296 P.3d 400 (2013).

Post-Judgment Award.

Where creditor was awarded attorney's fees and costs on an appeal to enforce a judgment, its remedy was exclusively under subsection (5); the less specific provisions of subsections (1) and (3) did not apply. *Credit Bureau of E. Idaho, Inc. v. Lecheminant*, 149 Idaho 468, 235 P.3d 1188 (2010).

Prevailing Party.

In an action for breach of a contract to assemble a specialty car engine, the district court erred by awarding the parties all attorney fees incurred in the litigation. The court had a duty to apportion to each party only the attorney fees related to the claims upon which each party prevailed under subsection (3). *Schroeder v. Partin*, 151 Idaho 471, 259 P.3d 617 (2011).

Since each claim in an action must be resolved before a court may determine the prevailing party, the identity of the prevailing party cannot be known until proceedings at the trial level are complete. *Steel Farms, Inc. v. Croft & Reed, Inc.*, — Idaho —, 297 P.3d 222 (2012).

District court abused its discretion when it declined to find the employee to be the prevailing party where, although the employee received an award far smaller than that which he sought, he defeated the employer's counterclaim and the award that he did receive was for more than a nominal amount. *Oakes v. Boise Heart Clinic Physicians, PLLC*, 152 Idaho 540, 272 P.3d 512 (2012).

Absent transcripts of the hearings at which the trial court denied plaintiffs' motion for attorney fees under subsection (3) and denied their motion for reconsideration of the denial order, the record was inadequate for appellate review of plaintiffs' claim that the trial court abused its discretion by ruling that no party prevailed in the multiclaime action in which a verdict was returned only in plaintiffs' favor and only for one of their claims. *Poole v. Davis*, — Idaho —, 288 P.3d 821 (2012).

12-121. Attorney's fees.

JUDICIAL DECISIONS

ANALYSIS

Actions on mechanic's liens.

Appeal without foundation.

F frivolous appeal.

In general.

Interlocutory appeals.

Not frivolous.

Prevailing party.

Actions on Mechanic's Liens.

Because § 45-513 is a specific statute providing for the award of attorney fees in proceedings to foreclose a mechanic's lien, §§ 12-120(3) and 12-121, which are general statutes, do not apply. *First Fed. Sav. Bank of Twin Falls v. Riedesel Eng'g, Inc.*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 190 (Sept. 14, 2012).

Appeal Without Foundation.

Because appellant provided absolutely no argument or authority that would even remotely support his assertion that he had standing to appeal, and all he did was increase the cost to the parties, the district court did not abuse its discretion in awarding the parents attorney fees on the ground that appellant brought the appeal unreasonably and without foundation. *Abolafia v. Reeves*, 152 Idaho 898, 277 P.3d 345 (2012).

Reasonableness.

The reasonableness of an attorney fee award is based on the trial court's consideration of the factors in Idaho R. Civ. P. 54(e)(3). The court need not specifically address all of the factors contained in that rule in writing, so long as the record clearly indicates that the court considered them all. *Thomas v. Thomas*, 150 Idaho 636, 249 P.3d 829 (2011).

Cited in: *Johnson v. Hunt* (In re Hunt), 2009 Bankr. LEXIS 4621 (Bankr. D. Idaho 2009); *Sirius LC v. Erickson*, 150 Idaho 80, 244 P.3d 224 (2010); *Kuhn v. Coldwell Banker Landmark, Inc.*, 150 Idaho 240, 245 P.3d 992 (2010); *Fazzio v. Mason*, 150 Idaho 591, 249 P.3d 390 (2011); *Thomas v. Thomas*, 150 Idaho 636, 249 P.3d 829 (2011); *Knipe Land Co. v. Robertson*, 151 Idaho 449, 259 P.3d 595 (2011); *Garner v. Povey*, 151 Idaho 462, 259 P.3d 608 (2011); *Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC*, 151 Idaho 740, 264 P.3d 379 (2011); *Noak v. Idaho Dep't of Corr.*, 152 Idaho 305, 271 P.3d 703 (2012); *Hurtado v. Land O'Lakes, Inc.*, — Idaho —, 278 P.3d 415 (2012); *Dorion v. Keane*, — Idaho —, 283 P.3d 118 (Ct. App. 2012).

F frivolous Appeal.

Where plaintiff voluntarily dismissed some of his claims as to a defendant and then re-raised those claims on appeal, his appeal, as to those issues, was frivolous, and the defendant was entitled to an award of costs and attorney fees related to those claims. *Davidson v. Davidson*, 150 Idaho 455, 248 P.3d 242 (Ct. App. 2011).

In a quiet title action, appellee was entitled to appellate attorney fees because, based on the number of appellant's claims and general inability to provide coherent argument or authority, the appeal could only be interpreted as a means to increase the cost of litigation and to harass. *McLean v. Cheyovich Family Trust*, — Idaho —, 283 P.3d 742 (2012).

In General.

An award of attorney fees pursuant to this

section is inappropriate where a party merely cites to the code section and fails to provide any argument as to why the party is entitled to the award. *Marek v. Lawrence*, — Idaho —, 278 P.3d 920 (2012).

Interlocutory Appeals.

Where an appeal is interlocutory in nature and the action will be remanded for further proceedings, neither party is the prevailing party on appeal and no attorney's fees can be then awarded. However, when the district court makes its prevailing party determination on remand, any award of attorney fees made at that time may include attorney fees for the interlocutory appeal. *Terra-West, Inc. v. Idaho Mut. Trust, LLC*, 150 Idaho 393, 247 P.3d 620 (2010).

Not Frivolous.

When a party pursues an action which contains fairly debatable issues, the action is not considered to be frivolous and without foundation. A claim is not necessarily frivolous simply because the district court concludes it fails as a matter of law. A misperception of the law, or of one's interest under the law, is not, by itself, unreasonable. Rather, the question is whether the position adopted was not only incorrect, but also so plainly fallacious that it could be deemed frivolous, unreasonable, or without foundation. *Garner v. Povey*, 151 Idaho 462, 259 P.3d 608 (2011).

Because the issue of whether filing an amended complaint restarted the time for serving the summons and complaint under Idaho R. Civ. P. 4(a)(2) had not been consid-

ered previously, the patient's appeal was not entirely frivolous, unreasonable, or without foundation, and defendant's request for attorney fees was denied. *Elliott v. Verska*, 152 Idaho 280, 271 P.3d 678 (2012).

Prevailing Party.

Since each claim in an action must be resolved before a court may determine the prevailing party, the identity of the prevailing party cannot be known until proceedings at the trial level are complete. *Steel Farms, Inc. v. Croft & Reed, Inc.*, — Idaho —, 297 P.3d 222 (2012).

Cited in: *Page v. Pasquali*, 150 Idaho 150, 244 P.3d 1236 (2010); *Thomas v. Thomas*, 150 Idaho 636, 249 P.3d 829 (2011); *Hoover v. Hunter*, 150 Idaho 658, 249 P.3d 851 (2011); *Vanderford Co. v. Knudson*, 150 Idaho 664, 249 P.3d 857 (2011); *Zingiber Inv., LLC v. Hagerman Highway Dist.*, 150 Idaho 675, 249 P.3d 868 (2011); *Suhadolnik v. Pressman*, 151 Idaho 110, 254 P.3d 11 (2011); *Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC*, 151 Idaho 740, 264 P.3d 379 (2011); *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 268 P.3d 1159 (2012); *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012); *McCormick Int'l USA, Inc. v. Shore*, 152 Idaho 920, 277 P.3d 367 (2012); *Trunnell v. Fergel*, — Idaho —, 278 P.3d 938 (2012); *Tapadeera, LLC v. Knowlton*, — Idaho —, 280 P.3d 685 (2012); *Gerdon v. Rydvalch*, — Idaho —, 280 P.3d 740 (2012); *Sec. Fin. Fund, LLC v. Thomason*, — Idaho —, 282 P.3d 604 (2012); *Indian Springs L.L.C. v. Andersen*, — Idaho —, — P.3d —, 2012 Ida. LEXIS 192 (Sept. 14, 2012).

12-123. Sanctions for frivolous conduct in a civil case.

JUDICIAL DECISIONS

Insurance Action.

This section and § 41-1839 are the exclusive remedies for obtaining attorney fees in insurance disputes. The award of fees was proper where the insured never raised any triable issues of fact and did not attempt to offer any factual evidence to support his claims that the title company acted without diligence or in bad faith when it sought to obtain for him an ownership interest in an access road, even though he demanded that

the title company do something to ensure he had an easement there. *Mortensen v. Stewart Title Guar. Co.*, 149 Idaho 437, 235 P.3d 387 (2010).

Cited in: *Berkshire Invs., LLC v. Taylor*, — Idaho —, 278 P.3d 943 (2012); *Tapadeera, LLC v. Knowlton*, — Idaho —, 280 P.3d 685 (2012); *Markin v. Grohmann*, — Idaho —, 280 P.3d 726 (2012).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state vexatious litigant statutes. 45 A.L.R.6th 493.

